

No. 15004

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United States  
Court of Appeals  
for the Ninth Circuit

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WESTERN CANADA STEAMSHIP CO., LTD.,  
Appellant,

vs.

UNITED STATES OF AMERICA,  
Appellee.

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Transcript of Record

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Appeal from the United States District Court for the  
Western District of Washington,  
Northern Division.

FILED

MAY 24 1956



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Court of Appeals**  
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**VS.**

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the District Court of the United States for the  
Western District of Washington, Northern Di-  
vision

In Admiralty No. 15848

WESTERN CANADA STEAMSHIP COMPANY,  
LIMITED, a Corporation,

Libelant,

vs.

UNITED STATES OF AMERICA,

Respondent.

LIBEL IN PERSONAM

TO THE HONORABLE JUDGES OF THE  
DISTRICT COURT OF THE UNITED  
STATES FOR THE WESTERN DISTRICT  
OF WASHINGTON, NORTHERN DIVI-  
SION

The libel of Western Canada Steamship Company,  
Limited, a corporation, as libelant, against respond-  
ent, United States of America, in a cause of con-  
tract civil and maritime, alleges as follows:

I.

Libelant, Western Canada Steamship Company,  
Limited, is now and at all times herein mentioned  
was a corporation duly organized and existing under  
and by virtue of the laws of the Dominion of  
Canada.

II.

Respondent, United States of America, is now and  
at all times herein mentioned was a corporation

sovereign which by the act of Congress approved March 3, 1925 (43 Stat. 1112 et seq.), Title 46 U. S. C. § 781 et seq., has consented to be sued in this Honorable Court on the cause of action herein stated, and except as herein otherwise alleged, was as to all matters and things herein alleged, acting by and through the Military Sea Transportation Service represented by its Contracting Officer. The Dominion of Canada under similar circumstances, allows nationals of the United States to sue in its Courts.

### III.

As of July 26, 1950, libelant as owner of the Canadian Flag Vessel Lake Sicamous, Official No. 175596, herein called the "Vessel," entered into a written time charter of the Vessel to respondent under Contract No. MST-197, herein called the "Charter," a duplicate original of which is in the possession of respondent, for a specified time, to wit, for a period of about 120 days from the time of delivery of the Vessel or to the termination of the voyage current at termination date, at a charter hire of \$1,125.00 per diem.

### IV.

The Vessel was delivered by libelant to respondent at Seattle, Washington on August 4, 1950, at noon, Pacific Daylight Standard Time and was redelivered by respondent to libelant at Seattle, Washington on February 12, 1951, at midnight, Pacific Standard Time, the elapsed time from delivery to redelivery, together with 1 day 17 hours allowed for comple-



tion of repairs following redelivery, was 194 days 6 hours. While in the service of the respondent the Vessel was employed exclusively in the transportation for respondent of munitions of war, owned by respondent, from war bases in the United States to war bases adjacent to Korea and was as a result employed as a public vessel of the United States within the meaning of the Act of Congress approved March 3, 1925, referred to in Article II hereof.

#### V.

Following the execution of the charter the market value of hire of the Vessel for charter purposes under similar conditions to those contained in the charter increased and during the entire period of the second voyage hereinafter mentioned, and for a period substantially in excess of three days following the date of redelivery of the Vessel, such market value of the hire of the Vessel was not less than the rate of \$55,200.00 per 30 day month, or \$1,840.00 per day.

#### VI.

The charter provides that the Vessel shall be employed as directed by the respondent as charterer, and following the delivery of the Vessel and under instructions of respondent, the Vessel made two voyages with munitions of war belonging to respondent and for use in Korea. The first voyage was from Mukilteo, Washington, to Okinawa, where the cargo was discharged and the Vessel returned to and arrived at Seattle, Washington,

on October 13, 1950. The second voyage was from Bangor, Washington to Moji and Kure, Japan, where the cargo was discharged and the Vessel returned to and arrived at Seattle, Washington on February 12, 1951, where the Vessel was redelivered as hereinabove alleged.

## VII.

Respondent was obligated as an implied term of the charter and as a matter of law, to so direct the employment of the Vessel as to permit the redelivery of the Vessel within the period of the charter, to wit, about 120 days from the time of delivery of the Vessel, unless prevented from so doing by causes specified in the charter. The failure of respondent to redeliver the Vessel within the period of the charter was due solely to the failure of the respondent, following the first voyage, to direct the employment of the Vessel on a second voyage with normal and available dispatch in proceeding to and arriving at port of loading, port or ports of discharge, and port of redelivery within the charter period, and in failing to load and discharge the Vessel with normal and available dispatch. In failing so to do respondent caused the second voyage of the Vessel to be unnecessarily prolonged beyond the period of the charter, which such prolongation was due solely either to the design, fault or neglect of respondent and was in no part due to the design, fault or neglect of libellant or of the Vessel or to any causes for which respondent is relieved by the provisions of the charter.

## VIII.

Following the redelivery of the vessel libelant submitted its claim to the Contracting Officer for hire unpaid at the charter rate, which has been paid, and for additional hire based upon the difference between the rate of hire specified in the charter and the market value of the hire of the Vessel for the period by which the redelivery of the Vessel was prolonged beyond the period of the charter. The Contracting Officer under date of July 2, 1951, refused to entertain the claim for such additional hire, advising libelant that the settlement of such a claim was not within the authority of the Military Sea Transportation Service or its Contracting Officer, and referred libelant to the Comptroller General of the United States. Libelant thereupon presented its claim for such additional hire to the Comptroller General of the United States and the same was by him rejected on November 7, 1952.

## IX.

By reason of the premises respondent is indebted to libelant for additional hire, to wit, the difference between the rate of hire specified in the charter and the market value of the hire of the Vessel for the period by which the redelivery of the Vessel was prolonged beyond the 120-day period of the charter, to wit, 74 days 6 hours, making a total sum of \$53,088.75, or alternatively, for the amount of such difference for so much of said period of prolongation as the Court may find to be justly due to libelant, with interest thereon at six per cent per annum

from February 12, 1951, no part of which said sum, or interest, has been paid to libelant, although duly demanded.

X.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and this Honorable Court.

Wherefore libelant prays:

1. That process in due form of law according to the Rules and Practices of Admiralty and Maritime Jurisdiction issue against respondent requiring it to appear and answer the foregoing libel.

2. That this Court shall decree the payment by respondent to libelant of the sum of \$53,088.75 or such lesser sum as the Court may find to be justly due to libelant, together with interest and costs to be taxed.

3. That libelant shall have such other, additional or further relief as may seem to the Court lawful, just and proper.

BOGLE, BOGLE & GATES,  
EDWARD G. DOBRIN,

/s/ CLAUDE WAKEFIELD,  
Proctors for Libelant.

Duly verified.

[Endorsed]: Filed February 9, 1953.

[Title of District Court and Cause.]

## ANSWER

Comes now the respondent, United States of America, and for answer to the Libel in Personam of the Western Canada Steamship Company, Ltd., herein, admits, denies and alleges as follows:

### I.

Respondent admits the allegations of Article I.

### II.

Respondent admits the allegations of Article II.

### III.

Respondent admits the allegations of Article III.

### IV.

Respondent admits the allegations of Article IV.

### V.

Respondent denies each and every allegation contained in Article V.

### VI.

Respondent admits the allegations of Article VI.

### VII.

Respondent denies each and every allegation contained in Article VII.

### VIII.

Respondent admits the allegations of Article VIII.



## IX.

Respondent denies each and every allegation contained in Article IX.

## X.

Respondent denies each and every allegation contained in Article X.

And for an Affirmative Defense, this respondent alleges:

That the said vessel was still engaged in the second voyage when the 120-day period elapsed, and was immediately redelivered upon the termination of the second voyage which was the "voyage current at termination date."

/s/ J. CHARLES DENNIS,  
United States Attorney.

Duly verified.

Receipt of copy acknowledged.

[Endorsed]: Filed April 30, 1953.

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[Title of District Court and Cause.]

REQUEST FOR ADMISSION OF FACTS AND  
OF GENUINENESS OF DOCUMENTS

Comes now libelant herein, by and through Bogle, Bogle & Gates, its proctors, pursuant to Rule 32B of the Supreme Court Rules of Practice in Admiralty and Maritime cases, and requests respondent herein to admit the truth of the following relevant matters of fact:

1. That the copy of the "Transcript of Register for Transmission to Registrar-General of Shipping and Seamen" attached hereto marked Exhibit 1 is a true and correct copy thereof, and that the facts stated therein are true and correct.

2. That the copy of MST-197 attached hereto marked Exhibit 2 is a true and correct copy thereof, and that MST-197 is the charter party sued upon herein.

3. That MST-197, and all amendments, modifications and addenda thereto, were prepared by respondent on its own forms and submitted to libelant for signature.

4. That by letter dated November 21, 1950, respondent, acting through R. A. Carl, L.C.D.R., S.C., U.S.N., Contracting Officer, notified libelant, through its agent, J. H. Winchester & Company, Inc., as follows:

"This will confirm notice of cancellation of the SS. Lake Sicamous time charter contract MST-197 given your broker, J. H. Winchester & Company, Inc., by telephone 1135 hours, 13 November, 1950.

"The SS. Lake Sicamous will be redelivered to owner upon termination of current voyage in Seattle, Washington.

"You are advised that all action incident to the redelivery of the vessel at Seattle should be coordinated with the Deputy Commander, Military Sea Transportation Service, North Pacific, Pier 37, Se-

attle 4, Washington, who, by copy of this letter is being requested to effect redelivery of the SS. Lake Sicamous.”

5. That on November 13, 1950, the SS. Lake Sicamous was bound on a voyage from Bangor, Washington, to Yokohama, Japan, and return, pursuant to the instructions of respondent under and by virtue of MST-197.

6. That the “Voyage current at termination date,” as said phrase is used in Article 5(a) of MST-197, was a voyage from Bangor, Washington, to Yokohama, Japan, and return.

7. That on or about November 30, 1950, respondent caused said vessel to deviate to Moji, Japan, for discharge of cargo, instead of permitting the said vessel to proceed to Yokohama, Japan, the port of discharge originally designated by respondent for said voyage.

8. That thereafter, on or about December 12, 1950, respondent caused said vessel again to deviate to Kure, Japan, for further discharge of cargo.

9. That thereafter, on or about January 19, 1951, respondent caused said vessel again to deviate to Kobe, Japan, for further discharge of cargo and/or refueling.

10. That by letter dated July 2, 1951, respondent, acting through R. A. Carl, L.C.D.R., S.C., U.S.N., Contracting Officer, advised libelant as follows:



“Reference is made to your letter of May 3, 1951, in which you urged reconsideration of your claim for additional charter hire in the amount of \$40,918.65 representing damages which you feel are owed to your company by the government, presumably on the theory that the charter was breached by the government.

“As you have been previously advised, Military Sea Transportation Service is of the opinion that you have been compensated at the agreed rate of hire for the period during which the government has had the use of your vessel in accordance with the terms of the charter party. However, since you apparently feel that you are entitled to \$40,918.65 as additional charter hire resulting from a breach of the charter, you are advised that the settling of such a claim for unliquidated damages arising out of breach of contract is not within the authority of Military Sea Transportation Service, but must be considered by the Comptroller General of the United States. In the event you decide to submit a claim for unliquidated damages to that officer, it should be addressed to the Comptroller General of the United States, General Accounting Office, Washington, D. C.”

11. That by letter dated November 7, 1952, respondent, acting through Lindsay C. Warren, Comptroller General of the United States, by W. J. McCarthy, advised libelant as follows:

“Your claim for \$40,918.65 representing the amount alleged to be due for unliquidated damages arising out of an alleged breach of contract because

of unnecessary delay in redelivery of SS Lake Sicamous by the Department of the Navy in connection with a charter hire under Contract No. MST-197 dated July 26, 1950, has been carefully examined and it is found that no part thereof may be allowed for the reasons hereinafter stated.

“The records disclosed that the subject contract provided for the charter hire of the vessel for approximately 120 days or for a period terminating with the voyage current at the end of the 120-day period. When the first voyage was completed only 65 days of the estimated charter period had been used. When voyage No. 2 was undertaken there remained 49 days of the 120 charter period. The record also discloses that you made no protest at that time concerning the matter even though you knew that under normal conditions the voyage would extend the time of use beyond the 120-day period: that Voyage No. 2 in fact took about 120 days or about 23 days longer than what might be construed as reasonable, although this prolonged period could not have been anticipated. However, the prolongation was caused by War conditions and exigencies of the War which the government could not anticipate when the vessel was dispatched on Voyage No. 2.

“Article 29 of the Contract Provisions provided a method for the increasing or decreasing charter hire within the period of the contract, which consisted of filing a clearance and the submission of any supporting data; that any disagreement on a

demand for a revised rate of hire that was deemed to be a disagreement as to a question of fact, could have been disposed of in accordance with Article 32 of the charter.

“Accordingly, the claim for unliquidated damages arising out of an alleged breach of contract, must be denied, as it is well settled that no adjustment nor payment from appropriated funds may be made in the absence of a specific provision therefor.

“I therefore certify that no balance is found due you from the United States.”

12. That the United States was engaged in a police action in Korea on July 26, 1950.

13. That the United States was engaged in the same police action in Korea on August 4, 1950.

14. That the United States was engaged in the same police action in Korea on October 14, 1950.

15. That the United States was engaged in the same police action in Korea on November 13, 1950.

16. That the United States was engaged in the same police action in Korea on November 21, 1950.

17. That the United States was engaged in the same police action in Korea on November 30, 1950.

18. That the United States was engaged in the same police action in Korea on December 12, 1950.

19. That the United States was engaged in the same police action in Korea on January 19, 1950.

20. That on none of the aforementioned dates was the United States engaged in a police action or War in Japan.

Each of the foregoing matters of which an admission is requested shall be deemed admitted unless within fifteen days after service hereof respondent serves upon libelant a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why respondent cannot truthfully either admit or deny those matters.

Dated at Seattle, Washington, February 15, 1955.

BOGLE, BOGLE & GATES,  
Proctors for Libelant.

Receipt of copy acknowledged.

[Endorsed]: Filed February 15, 1955.

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[Title of District Court and Cause.]

SUPPLEMENTAL REQUEST FOR ADMIS-  
SION OF FACTS AND OF GENUINENESS  
OF DOCUMENTS

Comes now libelant herein, by and through Bogle, Bogle & Gates, its proctors, pursuant to Rule 32B of the Supreme Court Rules of Practice in admiralty and maritime cases, and requests respondent herein to admit the truth of the following relevant matters of fact:

I.

That MST 197, when negotiated in July, 1950, contemplated two round voyages from a port or

ports on the West Coast of the United States to the Far East.

II.

That at said time the representatives of libelant and respondent who negotiated MST 197 assumed that said two round voyages would take approximately 120 days.

III.

That on or about January 19, 1951, libelant, by and through its agent, J. H. Winchester & Co., Inc., advised respondent as follows by letter dated January 19, 1951:

“We quote letter received from Western Canada Steamship Company, Limited, Owners of the above vessel under date of January 17 which is self-explanatory:

“ ‘We have to advise you that, as the above-named vessel is being retained on charter for about six months by the MSTs, we desire you to give them notice that it is our intention to claim an increase in the per diem hire figure of \$1,125.00 for the period in excess of 120 days due to the higher Time Charter rates paid subsequent to the expiration of the 120-day charter period, the increase to be agreed upon at a later date.’ ”

Each of the foregoing matters of which an admission is requested shall be deemed admitted unless within ten (10) days after service hereof respondent serves upon libelant a sworn statement either denying specifically the matters of which an admis-



sion is requested or setting forth in detail the reasons why respondent cannot truthfully either admit or deny those matters.

Dated at Seattle, Washington, February 25, 1955.

BOGLE, BOGLE & GATES,  
Proctors for Libelant.

Receipt of copy acknowledged.

[Endorsed]: Filed February 26, 1955.

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[Title of District Court and Cause.]

RESPONDENT'S ANSWER TO LIBELANT'S  
REQUEST FOR ADMISSION OF FACTS  
AND GENUINENESS OF DOCUMENTS

Respondent United States of America answers libelant's request for admission of facts and genuineness of documents served on respondent February 15, 1955, as follows:

1. Respondent admits Statement No. 1.
2. Answering Statement No. 2, respondent states that the copy of MST-197 attached is substantially a true copy and that the original will be produced at time of trial.
3. Respondent admits Statement No. 3.
4. Respondent admits Statement No. 4.
5. Respondent denies Statement No. 5, except that respondent admits that on November 13, 1950,

the SS Lake Sicamous was bound on a voyage from Bangor, Washington, to a port or ports in the Far East and return, under the terms and conditions of Time Charter Party MST-197. See answers to Statements 7, 8 and 9 *infra*.

6. Respondent denies Statement No. 6.

7. Respondent denies Statement No. 7 and in that connection states that the Time Charter Party MST-197 provides, in the War Risk addendum thereto, in part as follows:

“5. Liberties.—a. The Contractor, Master and Vessel shall have liberty to comply with any orders or directions as to loading, departure, arrival, routes, ports of call, stoppages, discharge, destination, delivery or otherwise howsoever given by the Government of any nation or department thereof or any person acting or purporting to act with the authority of such Government or of any department thereof, or by any committee or person having, under the terms of the war risk insurance on the Vessel, the right to give such orders or directions, and if by reason of or in compliance with any such orders or directions anything is done or is not done, such shall not be deemed a deviation or breach of orders or neglect of duty by the Master or the Vessel. Delivery or other disposition of the goods in accordance with such orders or directions shall be a fulfillment of the contract voyage. The Vessel may carry contraband, explosives, munitions, war-like stores, hazardous cargo, and may sail armed or unarmed and with or without convoy.”

8. Respondent denies Statement No. 8 and in that connection refers to and makes a part hereof as though fully set forth herein respondent's answer to Statement No. 7.

9. Respondent denies Statement No. 9 and in that connection refers to and makes a part hereof as though fully set forth herein respondent's answer to Statement No. 7.

10. Respondent denies Statement No. 10, except that respondent admits that a letter was written to libelant dated July 2, 1951, signed by R. A. Carl, LCDR, SC, USN, Contracting Officer, which letter read as follows:

"Reference is made to your letter of May 3, 1951, in which you urged reconsideration of your claim for additional charter hire in the amount of \$40,918.65 representing damages which you feel are owed to your company by the government.

"As you have been previously advised, Military Sea Transportation Service is of the opinion that you have been compensated at the agreed rate of hire for the period during which the government has had the use of your vessel in accordance with the terms of the charter party. However, since you apparently feel that you are entitled to \$40,918.65 as additional charter hire resulting from a breach of the charter, you are advised that the settling of such a claim for unliquidated damages arising out of breach of contract is not within the authority of Military Sea Transportation Service, but must



be considered by the Comptroller General of the United States. In the event you decide to submit a claim for unliquidated damages to that officer, it should be addressed to the Comptroller General of the United States, General Accounting Office, Washington, D. C.”

11. Respondent denies Statement No. 11, except that respondent admits that a letter was written to libelant dated November 7, 1952, by Lindsey C. Warren, Comptroller General of the United States, by W. J. McCarthy, which reads as follows:

“Your claim for \$40,918.65 representing the amount alleged to be due for unliquidated damages arising out of an alleged breach of contract because of unnecessary delay in redelivery of SS Lake Sicamous by the Department of the Navy in connection with a charter hire under Contract No. MST-197 dated July 26, 1950, has been carefully examined and it is found that no part thereof may be allowed for the reasons hereinafter stated.

“The records disclosed that the subject contract provided for the charter hire of the vessel for approximately 120 days or for a period terminating with the voyage current at the end of the 120-day period. When the first voyage was completed only 65 days of the estimated charter period had been used. When voyage No. 2 was undertaken there remained 49 days of the 120-day charter period. The record also discloses that you made no protest at that time concerning the matter even though you

knew that under normal conditions the voyage would extend the time of use beyond the 120-day period; that Voyage No. 2 in fact took about 121 days or about 23 days longer than [sic] what might be construed as reasonable, although this prolonged period could not have been anticipated. However, the prolongation was caused by [sic] conditions and exigencies of the War which the government could not anticipate when the vessel was dispatched on Voyage No. 2.

"Article 29 of the Contract Provision provided a method for the increasing or decreasing charter hire within the period of the contract, which consisted of filing a clearance and the submission of any supporting data; that any disagreement on a demand for a revised rate of hire that was deemed to be a disagreement as to a question of fact, could have been disposed of in accordance with Article 32 of the charter.

"Accordingly, the claim for unliquidated damages arising out of an alleged breach of contract, must be denied, as it is well settled that no adjustment nor payment from appropriated funds may be made in the absence of a specific provision therefor.

"I therefore certify that no balance is found due you from the United States."

12. Respondent denies Statement No. 12 and states that respondent was engaged on July 26, 1950, in war or warlike operations in Korea, Japan and other places in the Far East.

13. Respondent denies Statement No. 13 and states that respondent was engaged on August 4, 1950, in war or warlike operations in Korea, Japan and other places in the Far East.

14. Respondent denies Statement No. 14 and states that respondent was engaged on October 14, 1950, in war or warlike operations in Korea, Japan and other places in the Far East.

15. Respondent denies Statement No. 15 and states that respondent was engaged on November 13, 1950, in war or warlike operations in Korea, Japan and other places in the Far East.

16. Respondent denies Statement No. 16 and states that respondent was engaged on November 21, 1950, in war or warlike operations in Korea, Japan and other places in the Far East.

17. Respondent denies Statement No. 17 and states that respondent was engaged on November 30, 1950, in war or warlike operations in Korea, Japan and other places in the Far East.

18. Respondent denies Statement No. 18 and states that respondent was engaged on December 12, 1950, in war or warlike operations in Korea, Japan and other places in the Far East.

19. Respondent denies Statement No. 19.

20. Respondent denies Statement No. 20.

/s/ CHARLES P. MORIARTY,  
United States Attorney;

/s/ FRANK N. CUSHMAN,

Asst. United States Attorney;

/s/ KEITH R. FERGUSON,

Special Assistant to the Attorney General, Proctors  
for Respondent.

Duly verified.

Receipt of copy acknowledged.

[Endorsed]: Filed March 7, 1955.

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[Title of District Court and Cause.]

RESPONDENT'S ANSWER TO LIBELANT'S  
SUPPLEMENTAL REQUEST FOR AD-  
MISSION OF FACTS AND GENUINENESS  
OF DOCUMENTS

Respondent United States of America, objecting to the propriety of libelant's addressing more than one request for admission of facts and genuineness of documents to respondent under the Court's rules, answers libelant's supplemental request for admission of facts and genuineness of documents served on respondent February 26, 1955, as follows:

I.

Answering unto Statement No. I respondent states that MST-197, when negotiated in July, 1950, contemplated the delivery of munitions of war by the SS Lake Sicamous to the armed forces of the

United States and allied nations in the theatre of war during the existing Korean War, at such ports and at such times as directed by the Allied officials in charge and that upon the expiration of the first voyage, with knowledge of both parties to the charter of conditions existing in the theatre of war, a second voyage was made with consent of all concerned. Two voyages from a port or ports on the West Coast of the United States to the Far East, under such circumstances, were contemplated by the parties.

II.

Answering Statement No. II, respondent refers to and incorporates herein its answer to Statement No. I and the provision of the Charter Party which provides:

“Article 5. Period of the charter.

“(a) This charter shall be for a period of about 120 days from the time of delivery of the vessel or to the termination of the voyage current at termination date.”

Except as herein admitted the Statement No. II is denied.

III.

Respondent admits Statement No. III.

/s/ CHARLES P. MORIARTY,  
United States Attorney;

/s/ FRANK N. CUSHMAN,  
Asst. United States Attorney;



/s/ KEITH R. FERGUSON,  
Special Assistant to the Attorney General, Proctors  
for Respondent.

Duly verified.

Receipt of copy acknowledged.

[Endorsed]: Filed March 7, 1955.

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[Title of District Court and Cause.]

## REQUEST FOR ADMISSION OF FACTS AND GENUINENESS OF DOCUMENTS

To: Western Canada Steamship Co., Ltd., Libelant  
above named, and to Bogle, Bogle & Gates, its  
proctors:

Please take notice that respondent hereby requests libelant pursuant to Rule 32-B of the Supreme Court Admiralty Rules to admit within 10 days after service of this request the following facts:

### I.

Libelant and respondent in entering into Charter Party MST-197, contemplated the carriage under its terms of munitions of war into and within the theater of war of the Korean War or hostilities in which the United States was engaged at the time the said charter party was entered into.

### II.

The United States Naval Ordnance Dock at Bangor, Washington, is a naval or military facility

of the United States used for loading and discharging cargoes of ammunition and is operated exclusively by the United States as a part of its military operations and not as a commercial facility.

### III.

During the period from December 6, 1950, to December 13, 1950, the Port of Moji, Japan, was an advance war base under the military control of the United States or its Allies and used for logistic support of armed forces of the United States and Allied nations engaged in the Korean War.

### IV.

During the period from December 13, 1950, to January 19, 1951, the Port of Kure, Japan, was an advance war base under the military control of the United States or its Allies and used for logistic support of armed forces of the United States and Allied nations engaged in the Korean War.

### V.

During the period between December 6, 1950, and January 21, 1951, the Ports of Moji, Kure and Kobe in Japan were within the area subject to the military control of the Supreme Commander, Allied Powers.

### VI.

Libelant did not at any time prior to February 13, 1951, deliver to respondent any written demand that the parties negotiate to revise the rate of hire under Charter Party MST-197.

## VII.

Libelant did not at any time prior to February 13, 1951, deliver to respondent any new estimate and break-down of the per diem cost and the rate of hire under Charter Party MST-197.

## VIII.

Libelant did not at any time prior to February 13, 1951, deliver to respondent any explanation of the differences between the original estimate and the new estimate referred to in Statement No. VII above.

## IX.

Libelant did not at any time prior to February 13, 1951, deliver to respondent such relevant operating data, cost records, overhead absorption reports and accounting statements as might be of assistance in determining the accuracy and reliability of the new estimate referred to in Statement No. VII above.

## X.

Libelant did not at any time prior to February 13, 1951, deliver to respondent any statement of the experienced costs of operation under Charter Party MST-197.

## XI.

Libelant has not at any time mailed or otherwise furnished to the Contracting Officer under Charter Party MST-197 any written appeal addressed to the Secretary of the Navy regarding the rate of hire under the said charter party or any other dispute of fact under the said charter party.



XII.

The SS Lake Sicamous is a Canadian-type Liberty Ship.

XIII.

The SS Lake Winnipeg and the SS Lake Pennask are Canadian-type Liberty Ships.

XIV.

On or about November 10, 1950, the SS Lake Winnipeg was chartered by libelant to the Canadian Government for allocation to Military Sea Transportation Service, at the rate of \$1,225 Canadian (\$1,177.91 U.S.) per day.

XV.

On or about December 6, 1950, the SS Lake Pennask was chartered by libelant to the Canadian Government for allocation to Military Sea Transportation Service at the rate of \$1,225 Canadian (\$1,168.92 U.S.) per day.

/s/ CHARLES P. MORIARTY,  
United States Attorney;

/s/ FRANK N. CUSHMAN,  
Asst. United States Attorney;

/s/ KEITH R. FERGUSON,  
Special Assistant to the Attorney General, Proctors  
for Respondent.

Receipt of copy acknowledged.

[Endorsed]: Filed March 10, 1955.

[Title of District Court and Cause.]

LIBELANT'S ANSWER TO RESPONDENT'S  
REQUEST FOR ADMISSION OF FACTS  
AND GENUINENESS OF DOCUMENTS

Libelant, Western Canada Steamship Company, Limited, answers respondent's request for admission of facts and genuineness of documents served on libelant March 9, 1955, as follows:

1. With respect to statement No. I, libelant denies the same.

2. With respect to statement No. II, libelant cannot truthfully either admit or deny said statement for the reason that respondent has the exclusive knowledge of the truth or falsity thereof, and libelant has no knowledge or means of knowledge concerning the truth or falsity thereof.

3. With respect to statement No. III, libelant cannot truthfully either admit or deny said statement for the reason that respondent has the exclusive knowledge of the truth or falsity thereof, and libelant has no knowledge or means of knowledge concerning the truth or falsity thereof.

4. With respect to statement No. IV, libelant cannot truthfully either admit or deny said statement for the reason that respondent has the exclusive knowledge of the truth or falsity thereof, and libelant has no knowledge or means of knowledge concerning the truth or falsity thereof.

5. With respect to statement No. V, libelant cannot truthfully either admit or deny said statement for the reason that respondent has the exclusive knowledge of the truth or falsity thereof, and libelant has no knowledge or means of knowledge concerning the truth or falsity thereof.

6. With respect to statement No. VI, libelant states that the matters of fact set forth therein are not relevant to any issue in this case, but nevertheless denies the truth thereof.

7. With respect to statement No. VII, libelant states that the matters of fact set forth therein are not relevant to any issue in this case, but nevertheless admits the truth thereof.

8. With respect to statement No. VIII, libelant states that the matters of fact set forth therein are not relevant to any issue in this case, but nevertheless admits the truth thereof.

9. With respect to statement No. IX, libelant states that the matters of fact set forth therein are not relevant to any issue in this case, but nevertheless admits the truth thereof.

10. With respect to statement No. X, libelant states that the matters of fact set forth therein are not relevant to any issue in this case, but nevertheless admits the truth thereof.

11. With respect to statement No. XI, libelant states that the matters of fact set forth therein are not relevant to any issue in this case, but nevertheless admits the truth thereof.

12. With respect to statement No. XII, libelant denies the same, but admits that the SS Lake Sicamous is a Canadian Victory Ship substantially similar in design, dimensions and capacity to the so-called United States Liberty Ship.

13. With respect to statement No. XIII, libelant denies the same, but admits that the SS Lake Winnipeg and SS Lake Pennask are Canadian Victory Ships substantially similar in design, dimensions and capacity to the so-called United States Liberty Ship.

14. With respect to statement No. XIV, libelant denies the same.

15. With respect to statement No. XV, libelant denies the same.

WESTERN CANADA STEAM-  
SHIP COMPANY, LTD.,

By /s/ C. CALVERT KNUDSEN, of  
BOGLE, BOGLE & GATES,  
Proctors for Libelant.

Receipt of copy acknowledged.

Duly verified.

[Endorsed]: Filed March 18, 1955.

[Title of District Court and Cause.]

SUPPLEMENTAL REQUEST FOR ADMIS-  
SION OF FACTS AND GENUINENESS OF  
DOCUMENTS

To: Western Canada Steamship Co., Ltd., libelant  
above named, and to Bogle, Bogle & Gates, its  
proctors:

Please take notice that respondent hereby re-  
quests libelant, pursuant to Rule 32-B of the Su-  
preme Court Admiralty Rules, to admit within ten  
days after service of this request, the following  
facts:

I.

By charter party dated October 13, 1950, libel-  
ant chartered the SS Lake Winnipeg to His Majesty  
the King in right of Canada at the rate of \$1,225.00  
Canadian per day.

II.

By charter party dated October 13, 1950, libelant  
chartered the SS Lake Pennask to His Majesty the  
King in right of Canada at the rate of \$1,225.00  
Canadian per day.

III.

Both the said charter parties by which the SS  
Lake Winnipeg and the SS Lake Pennask were so  
chartered contained the following article:

“Article 41. Employment in the Service of the  
United Nations.

“It is understood that His Majesty proposes to  
make the vessel available to the United Nations for

operational management by the Government of the United States of America acting through Military Sea Transportation Service of the United States Navy or other appropriate agency or service in the trans-Pacific carriage of cargo and accordingly the Owner agrees (a) that wherever herein any right, power or authority is vested in or possessed by the Minister the same shall in each and every case be deemed to be vested in, had and possessed by any person or persons authorized either generally or specifically for such purpose or purposes by the Government of the United States of America (for greater particularity but without derogating from the generality of the foregoing any M.S.T.S. Contracting Officer shall be deemed to have and possess every such right, power and authority) and; (b) that wherever herein any duty, function or responsibility is imposed or conferred upon the Minister the same, if done, performed or discharged by any person or persons authorized either generally or specifically by the Government of the United States of America (e.g., a M.S.T.S. Contracting Officer as aforesaid) shall be deemed to have been done, performed and discharged as fully and effectually under this Charter Party as if done, performed or discharged by the Minister or his representative. Provided always that nothing in this Article shall prevent, preclude or prohibit the Minister either personally or through any officer or servant in the service of His Majesty from exercising his rights or discharging his obligations under this Charter



Party, in which case any act or thing done or any orders and instructions given shall be paramount, nor shall anything herein prevent, prohibit or preclude the Owner from appealing to the Minister in respect of any matter or thing done or omitted to be done by any person other than the Minister. If in the opinion of the Owner or of the Master any instructions or the exercise of any power or function would result in the employment of the vessel for any purpose substantially different or for a period of time greater than that contemplated by this contract the Owner shall forthwith notify the Canadian Maritime Commission thereof by letter or telegraph, providing full particulars of the incident, but in the meantime shall proceed to carry out such instructions unless and until the same have been countermanded by the Minister."

#### IV.

The SS Lake Winnipeg was delivered under the said charter party to Military Sea Transportation Service at Seattle, Washington, November 10, 1950.

#### V.

The SS Lake Pennask was delivered under the said charter party to Military Sea Transportation Service at Seattle, Washington, December 6, 1950.

#### VI.

On October 13, 1950, the exchange rate between United States dollars and Canadian dollars in the

United States stood at or about .9475 United States dollars per Canadian dollar.

CHARLES P. MORIARTY,

United States Attorney;

/s/ FRANK N. CUSHMAN,

Asst. United States Attorney;

/s/ KEITH R. FERGUSON,

Special Assistant to the Attorney General, Proctors  
for Respondent.

Receipt of copy acknowledged.

[Endorsed]: Filed April 13, 1955.

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[Title of District Court and Cause.]

LIBELANT'S ANSWER TO RESPONDENT'S  
SUPPLEMENTAL REQUEST FOR AD-  
MISSION OF FACTS AND GENUINENESS  
OF DOCUMENTS

Libelant, Western Canada Steamship Company, Limited, answers Respondent's Supplemental Request for Admission of Facts and Genuineness of Documents, served on libelant April 11, 1955, as follows:

I.

With respect to statement No. I, libelant admits the same.

II.

With respect to statement No. II, libelant admits the same.

III.

With respect to statement No. III, libelant admits the same.

IV.

With respect to statement No. IV, libelant denies the same, but admits that the SS Lake Winnipeg was delivered under the said charter party to His Majesty the King in right of Canada at Seattle, Washington, November 10, 1950, by delivering the same to an M.S.T.S. Contracting Officer at said time and place.

V.

With respect to statement No. V, libelant denies the same but admits that the SS Lake Pennask was delivered under the said charter party to His Majesty the King in right of Canada at Seattle, Washington, December 7, 1950, by delivering the same to an M.S.T.S. Contracting Officer at said time and place.

VI.

With respect to statement No. VI, libelant admits the same.

BOGLE, BOGLE & GATES,

By /s/ C. CALVERT KNUDSEN,

Proctors for Libelant.

Duly verified.

Receipt of copy acknowledged.

[Endorsed]: Filed April 21, 1955.

[Title of District Court and Cause.]

## INTERROGATORIES TO RESPONDENT

Comes Now, Libelant herein, by and through Bogle, Bogle & Gates, its proctors, pursuant to Rule 31 of the Supreme Court Rules of Practice in Admiralty and Maritime Cases, and propounds the following interrogatories to be answered separately and fully in writing under oath by respondent herein or by any officer thereof competent to testify in its behalf:

### I.

State the name of each and every ocean going cargo vessel, including specifically each and every Liberty or Victory type cargo vessel and each and every similar or larger cargo vessel, that discharged cargo at the Port of Kure, Japan, or entered said Port to discharge cargo, or was present in said Port for the purpose of discharging cargo, between December 1, 1950, and January 15, 1951.

### II.

With respect to each vessel named in response to Interrogatory No. I above, state the following information:

- (a) The name of the owner of the vessel;
- (b) The name of the bareboat charterer of the vessel, if any;
- (c) The name of the voyage charterer of the vessel, if any;
- (d) The name of the time charterer of the vessel, if any.

III.

If any vessel named in response to Interrogatory I above was at the time mentioned in said interrogatory under time charter to respondent herein, state the following information with respect to the terms of that time charter:

- (a) The duration of the term of the charter as stated in the charter;
- (b) The date upon which said term commenced;
- (c) The duration of the period, if any, for which respondent herein had a right to extend or renew the term of said charter.

Dated at Seattle, Washington, June 23, 1955.

BOGLE, BOGLE & GATES,  
Proctors for Libellant.

Receipt of copy acknowledged.

[Endorsed]: Filed June 23, 1955.

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[Title of District Court and Cause.]

ANSWERS TO INTERROGATORIES PRO-  
POUNDED BY LIBELANT TO RESPOND-  
ENT

Respondent answers to the interrogatories propounded by libellant as follows, restricting its answers to vessels under charter to the Military Sea Transportation Service in accordance with the order of the Court upon the hearing of respondent's exceptions:

## I.

The following ocean-going vessels under charter to Military Sea Transportation Service were in the port of Kure, Japan, for the purpose of discharging cargo in the period between December 1, 1950, and January 15, 1951:

SS Clarksburg Victory  
SS Simmons Victory  
SS Earlham Victory  
SS Loma Victory  
SS Olympic Pioneer  
SS Hibbing Victory  
SS Marquette Victory  
SS Berea Victory  
SS Lynn Victory  
SS Escanaba Victory  
SS Gainesville Victory  
SS Hunter Victory

## II.

Vessel Name: SS Clarksburg Victory.

Owner: Maritime Administration.

Bareboat Charterer: Mississippi Shipping Co.,  
Inc.

Vessel Name: SS Simmons Victory.

Owner: Maritime Administration.

Bareboat Charterer: A. H. Bull Steamship Co.

Vessel Name: SS Earlham Victory.

Owner: Maritime Administration.

Bareboat Charterer: States Marine Corp. of  
Delaware.



Vessel Name: SSLoma Victory.

Owner: Maritime Administration.

Bareboat Charterer: States Marine Corp. of  
Delaware.

Vessel Name: SS Olympic Pioneer.

Owner: Olympic Steamship Co.

Bareboat Charterer: (None.)

Vessel Name: SS Hibbing Victory.

Owner: Maritime Administration.

Bareboat Charterer: American Foreign Steam-  
ship Co.

Vessel Name: SS Marquette Victory.

Owner: Maritime Administration.

Bareboat Charterer: Pacific-Atlantic Steamship  
Co.

Vessel Name: SS Berea Victory.

Owner: Maritime Administration.

Bareboat Charterer: Blidberg Rothchild Co.

Vessel Name: SS Lynn Victory.

Owner: Maritime Administration.

Bareboat Charterer: Dolphin Steamship Corp.

Vessel Name: SS Escanaba Victory.

Owner: Maritime Administration.

Bareboat Charterer: North American Shipping  
& Trading Company.

Vessel Name: SS Gainesville Victory.

Owner: Maritime Administration.

Bareboat Charterer: American Mail Line, Ltd.

Vessel Name: SS Hunter Victory.

Owner: Maritime Administration.

Bareboat Charterer: Moore-McCormack Lines.

None of the vessels named above was under any voyage charter and all were time chartered to the United States through Military Sea Transportation Service.

### III.

The duration of the terms of the time charters of all the vessels named above was "a period of about 120 days from the time of delivery of the vessel or to the termination of the voyage current at termination date." The dates upon which the terms commenced were as follows:

Vessel Name	Dated Term Commenced
SS Clarksburg Victory . . . . .	September 6, 1950
SS Simmons Victory . . . . .	September 7, 1950
SS Earlham Victory . . . . .	October 2, 1950
SS Loma Victory . . . . .	September 7, 1950
SS Olympic Pioneer . . . . .	July 22, 1950
SS Hibbing Victory . . . . .	August 30, 1950
SS Marquette Victory . . . . .	August 13, 1950
SS Berea Victory . . . . .	September 1, 1950
SS Lynn Victory . . . . .	August 26, 1950
SS Escanaba Victory . . . . .	August 30, 1950
SS Gainesville Victory . . . . .	September 6, 1950
SS Hunter Victory . . . . .	September 8, 1950

All the time charters of the vessels mentioned above provided that charterer had the privilege of

continuing the charter for a second period of about 120 days.

/s/ CHARLES P. MORIARTY,  
United States Attorney;

/s/ F. N. CUSHMAN,  
Asst. United States Attorney;

/s/ KEITH R. FERGUSON,  
Special Assistant to the  
Attorney General;

/s/ GRAYDON S. STARING,  
Atty., Department of Justice,  
Proctors for Respondent.

Duly verified.

Receipt of copy acknowledged.

[Endorsed]: Filed August 3, 1955.

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[Title of District Court and Cause.]

### AMENDED ANSWER

Comes now the respondent United States of America and by leave of Court files its amended answer herein to the libel of Western Canada Steamship Company, Ltd., a corporation, in a cause of contract civil and maritime, and admits, denies and alleges as follows:

#### I.

Answering unto Article I of the libel, respondent admits the allegations thereof.

## II.

Answering unto Article II of the libel, respondent admits that with respect to the matters and things in the libel alleged, respondent United States of America was acting by and through the Military Sea Transportation Service represented by its various offices and admits that respondent United States of American is now and at all times in the libel mentioned was a corporation sovereign. The remaining allegations of Article II of the libel are matters of law for consideration by the Court and require no answer.

## III.

Answering unto Article III of the libel, respondent admits the allegations thereof.

## IV.

Answering unto Article IV of the libel, respondent admits the allegations thereof.

## V.

Answering unto Article V of the libel, respondent denies each and every, all and singular, the allegations thereof.

## VI.

Answering unto Article VI of the libel, respondent alleges that under the charter the vessel was to be employed according to the terms and conditions of the said charter party and not otherwise or at all; that the vessel made two voyages with munitions of war belonging to respondent for use in Korea; that the first such voyage was from Mukilteo,

Washington, to Okinawa, from which the vessel returned to and arrived at Seattle, Washington, on October 13, 1950; that the second such voyage commenced November 10, 1950, and was from Bangor, Washington, to Moji, Kure and Kobe, Japan, where the cargo was discharged and from whence the vessel returned to and arrived at Seattle, Washington on February 12, 1951, where the vessel was redelivered. Respondent denies each and every, all and singular, the allegations not herein otherwise admitted.

## VII.

Answering unto Article VII of the libel, respondent alleges that the rights and obligations of libelant and respondent under the said charter were in accordance with the terms and conditions of the said charter party MST-197 and not otherwise or at all. Respondent further alleges that it redelivered the said vessel to libelant within the period of the charter as shown by the terms and conditions of the said charter party. Respondent denies each and every, all and singular, the allegations not herein otherwise admitted.

## VIII.

Answering unto Article VIII of the libel, respondent alleges that following the redelivery of the said vessel libelant addressed to Military Sea Transportation Service a certain letter dated February 28, 1951, wherein libelant made demand for certain charter hire at the charter rate and also for a certain sum not provided for in the said charter party; that all the charter hire so demanded to the extent



that such charter hire was provided for in the charter party has been paid by respondent to libelant; that the Contracting Officer, Military Sea Transportation Service, wrote to libelant a letter under date of April 23, 1951, and also a letter under date of July 2, 1951, stating that no further sum was due to libelant under the said charter party. Respondent's proctors have not received information sufficient to answer the allegation that libelant presented a claim to the Comptroller General and that such claim was rejected and upon that ground respondent denies the said allegation. Respondent denies each and every, all and singular, the allegations not herein otherwise admitted.

### IX.

Answering unto Article IX of the libel, respondent denies each and every, all and singular, the allegations thereof.

### X.

Answering unto Article X of the libel, respondent denies each and every, all and singular, the allegations thereof.

Further Answering Unto the Libel and for a First Separate and Affirmative Defense Thereto, Respondent Alleges as Follows:

### XI.

As of July 26, 1950, libelant, as owner of the Canadian Flag Vessel Lake Sicamous, Official No. 175,596, entered into a written time charter of the Lake Sicamous with respondent under the terms, provisions and conditions of a certain charter party



designated No. MST-197, a duplicate original of which is in the possession of libelant, for a period of about 120 days from the time of delivery of the vessel or to the termination of the voyage current at termination date at a charter hire of \$1,125 per diem, the said vessel being so chartered pursuant to the terms and provisions of the said charter party and not otherwise or at all. The said charter party is referred to by the libelant in Article III of the libel.

## XII.

That the said Charter Party MST-197 between libelant and respondent provides in part as follows:

“Article 32. Disputes”

“Except as otherwise provided in this contract any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail, or otherwise furnish a copy thereof to the Contractor. Within 30 days from the date of receipt of such copy, the Contractor may appeal by mailing or otherwise furnishing to the Contracting Officer a written appeal addressed to the Secretary, and the decision of the Secretary or his duly authorized representative for the hearing of such appeals shall be final and conclusive; provided that, if no such appeal is taken, the decision of the Contracting Officer shall be final and conclusive. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard

and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision."

### XIII.

That the said Charter Party MST-197 provides in part as follows:

"Article 29. Revision of Rate of Hire."

"(a) General Revision.

"(1) The rate of hire specified in Article 2 may be increased or decreased in accordance with this Article.

"(2) Demand for negotiation. At any time subject to the limitations specified in this Article, either the Charterer or the Contractor may deliver to the other a written demand that the parties negotiate to revise the rate of hire under this Charter Party \* \* \* Each demand for negotiation shall specify a date (identical with or subsequent to the date of delivery of the demand) on which any resulting revision of the rate of hire shall be effective. This date is hereinafter referred to as 'the effective date of the revision of hire.' Any demand made under this Article, if made by the Contractor, shall state briefly the ground or grounds therefor and shall be accompanied by the statements and data referred to in paragraph (3) of this Article. \* \* \*

\* \* \*

“(4) Negotiation.

“(A) Upon the filing of the statements and data required by paragraph (3) of this Article, the Contractor and the Contracting Officer will negotiate in good faith to agree upon a rate of hire to be effective on the effective date of the revision of hire. Negotiations for revisions of hire under this Article will be conducted on the same basis employing the same types of data, including without limitations, comparative prices, comparative costs, and trends thereof, as in negotiating hire for a new Military Sea Transportation Service contract.

“(B) After such negotiations the agreement reached will be evidenced by a supplemental agreement to this Charter Party stating the revised rate of hire to be effective on the effective date of the revision of hire (or such other later date as the parties may fix in such supplemental agreement).

“(5) Disagreements. If, within thirty days after the date on which the statements and data are required to be filed pursuant to paragraph (2) of this Article (or such further period as may be fixed by written agreement) the Contracting Officer and the Contractor fail to agree to a revised rate of hire, the failure to agree shall be deemed to be a disagreement as to a question of fact which shall be disposed of in accordance with Article 32 (Disputes) and the rate of hire so fixed shall remain in effect for the balance of the Charter Party notwithstanding any other provision of this Article.

“(6) Payments. Until the revised rate of hire shall have become effective in accordance with this Article, the rate of hire in force at the time the demand was made for negotiations shall be paid, subject to appropriate later adjustment made pursuant to paragraph (4) or (5) of this Article.” \* \* \*

#### XIV.

That libelant has failed to fulfill a condition precedent to its claim for additional hire by failure to comply with the provisions of Article 29 of the said charter party with respect to increase of the rate of hire by failing to deliver to respondent any written demand under the terms and provisions of Article 29, stating that libelant desired to negotiate the revision of the rate of charter hire; and that by such failure so to notify respondent in writing of its desire to negotiate the rate of charter hire, in accordance with the terms and conditions of the said charter party, including the said Article 29, the rate of hire specified in Article 2 of the said charter party, to wit, \$1,125 per diem, remained in full force and effect during the entire time when the said charter party was in force and until the redelivery of the said vessel on February 12, 1951.

Further Answering Unto the Libel and for a Second Separate and Affirmative Defense Thereto, Respondent Alleges as Follows:

#### XV.

\* \* \*

Further Answering Unto the Libel and for a Fourth Separate and Affirmative Defense Thereto, Respondent Alleges as Follows:

### XIX.

Respondent incorporates, refers to and makes a part hereof as though fully set forth herein all the allegations of Article XI of respondent's first separate and affirmative defense to the libel.

### XX.

That the Lake Sicamous, on her second voyage under the said Charter Party MST-197, commencing November 10, 1950, carried munitions of war to the Ports of Moji, Kure and Kobe, Japan, during a period when the United States and other members of the United Nations Organization were engaged in war or warlike operations in Korea; that large quantities of the supplies and munitions required for such war or warlike operations were shipped to and transshipped from and handled in the Japanese Ports of Moji, Kure and Kobe; that the supplies and munitions thus shipped to and from and handled in the said ports far exceeded what the said ports were equipped to handle with dispatch and in consequence ships arriving at the said ports with cargo during the period of the said second voyage of the Lake Sicamous suffered delay in discharging their cargoes because of the limited equipment and facilities of the said ports and because of the urgent needs of the United States and the United Nations Organization in the conduct of operations of war for



particular cargoes of supplies and munitions, all of which conditions were actually or constructively known to libelant at the time the said charter party was executed; that the officers, employees and agents of respondent used due care and employed their best efforts consistent with the requirements of the war or warlike operations then in progress to prevent and reduce such delays and to discharge the cargo of the *Lake Sicamous* with all possible dispatch; and that any delay in discharging the *Lake Sicamous* was due to the said lack of equipment and facilities and to the said urgent needs of the United States and the United Nations Organization in connection with the conduct of the war or warlike operations in Korea and not to any negligence or fault of respondent.

## XXI.

That libelant chartered the *Lake Sicamous* to respondent for the purpose of carrying supplies and munitions of war to the Far East for use in war or warlike operations in Korea, well knowing that the vessel would be used for such purpose and well knowing the nature and extent of such war or warlike operations and the conditions resulting therefrom with respect to the handling of cargo in the Ports of Japan; and that libelant assumed the risk of any and all the matters and things complained of in the libel.



Further Answering Unto the Libel and for a Fifth Separate and Affirmative Defense Thereto, Respondent Alleges as Follows:

## XXII.

That respondent incorporates, refers to and makes a part hereof as though fully set forth herein all the allegations of Article XI of respondent's first separate and affirmative defense of the libel and Article XX of respondent's fourth separate and affirmative defense to the libel.

## XXIII.

That any delay in discharging the Lake Sicamous in the Ports of Moji, Kure and Kobe and all the matters and things complained of in the libel were caused by the act or acts of the United Nations Organization and by the act or acts of a sovereign government or sovereign governments acting in their sovereign capacities in the conduct of war or war-like operations.

Further Answering Unto the Libel and for a Sixth Separate and Affirmative Defense Thereto, Respondent Alleges as Follows:

## XXIV.

That respondent incorporates, refers to and makes a part hereof as though fully set forth herein all the allegations of Article XI of respondent's first separate and affirmative defense to the libel, and Article XX of respondent's fourth separate and affirmative defense to the libel.

## XXV.

That the said Charter Party MST-197 provides in part as follows:

“Article 21. Exceptions. The act of God, enemies, fire, restraint of princes, rulers or people, and all dangers and accidents of the seas, rivers, machinery, boilers and steam navigation, and errors of navigation throughout this Charter Party always mutually excepted. The Vessel shall have the liberty to sail with or without pilots, to tow and to be towed, to assist vessels in distress, and to deviate for the purpose of saving life or property, or to go into drydock or into ways with or without cargo on board.”

## XXVI.

That any delay in discharging the Lake Sicamous in the Ports of Moji, Kure and Kobe, and all the matters and things complained of in the libel, were caused by the act or acts of the United Nations Organization and by the act or acts of a sovereign government or sovereign governments acting in their sovereign capacities in the conduct of war or warlike operations, and all such delay and all the matters and things complained of in the libel were the result of restraint of princes, rulers or people within the provisions of the said Article 21 of the said charter party.

Wherefore, respondent prays that the libel herein be dismissed with costs.

CHARLES P. MORIARTY,  
United States Attorney;

By /s/ F. N. CUSHMAN,

Assistant United States At-  
torney;

/s/ KEITH R. FERGUSON,

Special Assistant to the Attorney General, Proctors  
for Respondent.

Receipt of Copy acknowledged.

Lodged February 15, 1955.

[Endorsed]: Filed August 3, 1955.

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In the District Court of the United States for the  
Western District of Washington, Northern Di-  
vision

No. 15848

WESTERN CANADA STEAMSHIP CO., LTD.,

Libelant,

vs.

UNITED STATES OF AMERICA,

Respondent.

### ORAL DECISION

This Matter having come on for hearing before the Honorable John C. Bowen, Judge of the above-entitled Court, on August 3, 1955; all parties being present or represented by counsel; all parties having been heard and all parties having rested, the Court thereupon rendered the following

## Oral Decision

The Court: The Court has been impressed by the very well ordered and strong arguments of counsel on both sides. I do not know when I have heard clearer statements of the respective positions of litigants than counsel have made in this case on this occasion.

There is nothing plainer in the law that I know of than that contracting parties are not responsible for interruptions of contract performance by the processes of Government, and it does not make too much difference what kind of a form those Government acts take, whether they compel civil acts or whether they are warlike operations.

In this case, the obligation of the United States, through its War Shipping Administration, to return the vessel to the charterer at the expiration of the term of the charter without unnecessary delay was interfered with and rendered impossible by the governmental operations of the United States or of the over-all command of the United Nations acting for the United States and other sovereignties which in concert and carrying on those governmental operations, whatever they were properly called, whether they were the Korean War itself or whether they were war connected police activities of a State or of an organization of member states.

The fact is that the ports of Japan—no one could doubt the proof on that—were congested everywhere as a result of efforts by the United States, as

a member of or in behalf of that concert of nations in that enterprise to get ammunition into Korea to meet a great national and international military emergency.

All of the acts and things done and omitted which were complained of by libelant in this action, wherever occurring, were those things which, as to things omitted, were excused by reason of the fact that they were compelled by the warlike and lawful police Governmental activities of the United States and of the United Nations and its member nations in their concerted support and contribution to that Korean war. None of the acts done which were complained of by libelant were done under any other circumstances. For all such acts and things done and omitted, the United States as a respondent in this action is not liable.

The Court finds, concludes and decides that the libelant recover nothing by reason of its libel in this action and the amendment thereto filed on the eve of trial.

Mr. Knudsen: If the Court please, might I suggest to the Court that with respect to the delay at Bangor there was no——

The Court (Interposing): The Court has made its decision and cannot, profitably to counsel, have any further discussion of the matter.

[Endorsed]: Filed September 2, 1955.



[Title of District Court and Cause.]

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause having come on regularly for trial on the 3rd, 4th and 22nd days of August, 1955, libellant being represented by Bogle, Bogle & Gates, and C. Calvert Knudsen, Esquire, and respondent being represented by Charles P. Moriarty, Esquire, United States Attorney; F. N. Cushman, Esquire, Assistant United States Attorney; Keith R. Ferguson, Esquire, Special Assistant to the Attorney General, and Graydon S. Staring, Esquire, Attorney, Department of Justice, and the parties having advised of their readiness for trial and evidence both oral and documentary having been introduced and briefs having been filed and oral argument made by the parties and the cause thereafter having been submitted for decision and the Court, having been fully advised in the premises, after due deliberation, makes the following findings of fact and conclusions of law:

### Findings of Fact

#### I.

Libellant is a corporation organized and existing under the laws of the Dominion of Canada and was at all material times the owner of the SS Lake Sicamous, a Canadian flag vessel, Official No. 175596.

#### II.

On July 26, 1950, libellant time chartered the SS Lake Sicamous to respondent United States of



America, acting through the Military Sea Transportation Service of the Department of the Navy, under Time Charter Party MST-197, for a period of "about 120 days from the time of delivery of the Vessel or to the termination of the voyage current at termination date" with world-wide trading limits. The charter party provided in Article 21 a mutual exception of restraint of princes, rulers or people. The master was appointed and the crew engaged by the libelant and the master and crew were employees of libelant. Under the Charter Party the cargo was to have been loaded and discharged by respondent at its own cost and expense.

### III.

Charter Party MST-197 provided in Article 29 that the rate of charter hire might be increased or decreased under procedure there fully specified. Article 29 provided that either party might deliver a written demand for negotiation to the other specifying a date, not prior to the date of demand, when the proposed revision should be effective, such demand to be accompanied by certain specified statements and data, and further provided that negotiations should thereupon be entered into by the parties pursuant to further provisions of the said article with respect to the basis of negotiations and the resolution of disagreements.

### IV.

By admission of the parties, in entering into Charter Party MST-197, the libelant and respondent

contemplated two round voyages of the SS Lake Sicamous from the West Coast of the United States to ports in the Far East, carrying munitions of war for the armed forces of the United States engaged in hostilities in Korea. At the time of entering into the charter party both libelant and respondent knew the facts hereinafter set forth in numbers XI and in the first two sentences of XIII of these findings of fact.

#### V.

The Lake Sicamous was delivered by libelant to respondent at Seattle, Washington, under the charter party at 12 o'clock noon Pacific Daylight Saving Time, August 4, 1950, and was thereafter operated as a merchant vessel for respondent until the time of her redelivery. The vessel loaded at Mukilteo, Washington, sailed on her first voyage August 25, 1950, discharged her cargo at Okinawa and returned to Seattle arriving October 13, 1950.

#### VI.

On October 17, 1950, the Lake Sicamous arrived at the Naval Ordnance Depot, Bangor, Washington, to load a cargo of ammunition for her second voyage. At Bangor, without evidence disclosing objection from libelant, she was laden with approximately 7,000 tons of 105mm and 155mm Howitzer shells for the use of the Army ground forces and approximately 2,800 tons of 5-inch rockets for the use of the Air Force. Loading was completed November 10, 1950. The redelivery of the Lake Sicamous to libelant was not delayed by any inexcusable act or

omission connected with the loading of her cargo at Bangor.

### VII.

On November 10, 1950, without evidence disclosing objection from libelant, the *Lake Sicamous* sailed on her second voyage. Before sailing her master received from the Naval Control of Shipping Officer at Seattle secret routing instructions of the type commonly given vessels in wartime, which provided that at a certain point en route the vessel might receive a radio message in code with further instructions as to her port of destination. Such further instructions were received en route in accordance with which the ship put into the Port of Moji, Japan, arriving December 6, 1950.

### VIII.

At Moji from December 10 to December 12, 1950, the cargo of rockets for the Air Force, amounting to 2,800 tons, was discharged. The ship was then directed to the Port of Kure, Japan, for the discharge of her remaining cargo.

### IX.

The *Lake Sicamous* arrived at Kure December 13, 1950, and anchored to await a berth. Thereafter and as soon as discharging facilities were available, in accordance with military priorities then in effect and the urgent needs of the armed forces engaged in hostilities in Korea, she was afforded discharging facilities and commenced to discharge January 12, 1951. Her discharge was completed January 19,

1951, on which date she departed Kure for Kobe for the purpose of bunkering and provisioning.

### X.

The Lake Sicamous arrived at Kobe January 20, 1951, bunkered and sailed January 21, 1951, for Seattle, where she arrived and was redelivered to libelant February 12, 1951.

### XI.

At all material times the Islands of Japan were occupied and controlled by a group of sovereign powers, of which the United States was one.

### XII.

At all material times the Port of Kure was occupied and controlled by British Commonwealth forces and was the headquarters of British Commonwealth forces in Japan. During the period when the Lake Sicamous lay in the Port of Kure, United States armed forces were permitted by the Commander of British Commonwealth forces to use certain facilities of the Port of Kure for the purpose of loading and discharging cargoes of American vessels. During such period priority in the use of such facilities was enjoyed by British and other vessels supplying British Commonwealth forces.

### XIII.

At all material times United States armed forces were engaged in hostilities in Korea pursuant to a request of the United Nations Organization and under United Nations command. The United States armed forces so engaged were based upon Japan and supplied through Japanese ports. The ports of

Japan were congested everywhere as a result of efforts by the United States as a member of or in behalf of a concert of nations to get ammunition into Korea to meet a great national and international military emergency.

#### XIV.

Throughout the autumn of 1950 and early winter of 1951 and at all material times military operations in Korea had imposed heavy burdens on the facilities of all the military ports of Japan and had taxed the capacity of those ports, including in particular the Ports of Moji and Kure, to handle military cargo and particularly to handle ammunition because of the special handling required by ammunition, the regulations applicable to it, the danger to vessels, ports, population and equipment and the precautions necessary in its movement and storage.

#### XV.

In early December, 1950, and at all material times thereafter, military developments in Korea had resulted in an urgent need on the part of the United States armed forces for aircraft ammunition, including 5-inch rockets, and a relatively low demand for ground forces ammunition, including 105mm and 155mm Howitzer shells. As a result, in the discharge and handling of cargoes in military ports in Japan, aircraft ammunition, including 5-inch rockets, was regarded and treated of the highest priority, and ground forces ammunition, including 105mm and 155mm Howitzer shells, was regarded and treated as of very low priority.



## XVI.

Any delay suffered by the *Lake Sicamous* in completing her second voyage under the charter party and being redelivered to her owners was the result of the operation of military priorities, the urgent needs of United States forces engaged in military operations and the governmental operations of the United States or of the over-all command of the United Nations acting for the United States and other sovereignties which were in concert and carrying on those governmental operations, whatever they were properly called, whether they were the Korean War itself or whether they were war-connected police activities of a state or of an organization of member states.

## XVII.

Respondent exercised reasonable diligence in all the circumstances in its performance of Charter Party MST-197.

## XVIII.

Libelant failed to perform the terms and conditions of Article 29 of the charter party by failing to make any demand for negotiations for a revision of the rate of charter hire under the terms and conditions of Article 29.

## Conclusions of Law

## I.

This Court has jurisdiction of this action under the Suits in Admiralty Act, Title 46, U.S.C., Sections 741 et seq.



II.

The Lake Sicamous was redelivered to libelant by respondent within the period provided in Charter Party MST-197 between libelant and respondent.

III.

Any and all delay suffered by the Lake Sicamous on her second voyage under the charter party and all of the acts and things done and omitted which were complained of by libelant in this action, wherever occurring, were things which were excused by reason of the fact that they were compelled by the warlike and lawful police and governmental activities of the United States and of the United Nations and its member nations in their concerted support and contribution to the Korean War. None of the acts done which were complained of by libelant were done under any other circumstances. For all such acts and things done and omitted, the United States as a respondent in this action is not liable.

IV.

Respondent has fully performed all the matters and things to be performed by it under the charter party and has committed no breach of its charter party with libelant.

V.

Libelant has failed to prove the material allegations of its libel and has failed to prove any cause of action against respondent.

## VI.

Respondent is entitled to a decree dismissing the libel with costs.

It Is Therefore Ordered that a decree be entered in favor of respondent and that the libel be dismissed with costs.

Done in open court this 19th day of September, 1955.

/s/ JOHN C. BOWEN,  
District Judge.

Presented by:

/s/ CHARLES P. MORIARTY,  
United States Attorney;

/s/ F. N. CUSHMAN,  
Assistant United States At-  
torney;

/s/ KEITH R. FERGUSON,  
Special Assistant to the At-  
torney General,

/s/ GRAYDON S. STARING,  
Attorney, Department of Justice, Proctors for Re-  
spondent, United States of America.

Receipt of Copy acknowledged.

[Endorsed]: Filed September 19, 1955.

[Title of District Court and Cause.]

FINAL DECREE

This cause having come on regularly for trial on the 3rd, 4th and 22nd days of August, 1955, libelant being represented by Bogle, Bogle & Gates, and C. Calvert Knudsen, Esquire, and respondent being rpresented by Charles P. Moriarty, Esquire, United States Attorney, F. N. Cushman, Esquire, Assistant United States Attorney, Keith R. Ferguson, Esquire, Special Assistant to the Attorney General, and Graydon S. Staring, Esquire, Attorney, Department of Justice, and the parties having advised of their readiness for trial and evidence both oral and documentary having been introduced and briefs having been filed and the matter having been argued and submitted by the advocates of the respective parties, and the Court after due deliberation having delivered its oral decision on August 22, 1955, in favor of respondent and having thereafter made and entered its findings of fact and conclusions of law, it is hereby

Ordered, Adjudged and Decreed that the libel herein be and the same is hereby dismissed on the merits with prejudice and that respondent have and recover from libelant the respondent's taxable costs in the amount of \$63.00, which are hereby taxed, and that libelant recover no costs against respondent.

Done in open Court this 12th day of September, 1955.

/s/ JOHN C. BOWEN,

United States District Judge.

Presented and approved by:

/s/ CHARLES P. MORIARTY,  
United States Attorney;

/s/ F. N. CUSHMAN,  
Assistant U. S. Attorney,

/s/ KEITH R. FERGUSON,  
Special Assistant to  
the Attorney General,

/s/ GRAYDON S. STARING,  
Attorney, Department of Justice, Proctors for Re-  
spondent.

Receipt of copy acknowledged.

[Endorsed]: Filed and entered September 19,  
1955.

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[Title of District Court and Cause.]

### NOTICE OF APPEAL BY LIBELANT

To: United States of America, Respondent, and  
Charles P. Moriarty, United States Attorney,  
Its Proctor:

You, and each of you, will please take notice that Western Canada Steamship Company, Ltd., libelant herein, appeals to the United States Court of Appeals for the Ninth Circuit from the Findings of Fact, Conclusions of Law and Final Decree of this Court made and entered herein on September 19,

1955, and from each and every part of said Findings of Fact, Conclusions of Law and Final Decree.

Dated this 15th day of December, 1955.

BOGLE, BOGLE & GATES,  
Proctors for Libelant.

### ORDER ALLOWING APPEAL

It is hereby ordered that the appeal herein be and the same hereby is allowed.

Done in Open Court this 15th day of December, 1955.

/s/ JOHN C. BOWEN,  
United States District Judge.

Presented by :

/s/ C. CALVERT KNUDSEN,  
Of Bogle, Bogle & Gates,  
Proctors for Libelant.

Receipt of copy acknowledged.

[Endorsed]: Filed December 15, 1955.

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[Title of District Court and Cause.]

### LIBELANT'S ASSIGNMENT OF ERRORS

Libelant hereby assigns error in the trial and proceedings before the Court and in the Findings of Fact, Conclusions of Law and Final Decree entered and filed herein on September 19, 1955, as follows:

1. That the Court erred in finding that the redelivery of the *Lake Sicamous* to libelant was not delayed by any inexcusable act or omission connected with the loading of her cargo at Bangor, Washington. (Finding of Fact VI).

2. That the Court erred in failing to find and conclude that the redelivery of the *Lake Sicamous* to libelant was delayed 11 days, 17 hours and 15 minutes by reason of the failure of respondent to load and stow the vessel within a reasonable time and with reasonable diligence at Bangor, Washington.

3. That the Court erred in finding that the *Lake Sicamous* was afforded discharging facilities and commenced to discharge as soon as discharging facilities were available after her arrival at Kure, Japan, in accordance with military priorities then in effect and the urgent needs of the armed forces engaged in hostilities in Korea. (Finding of Fact IX).

4. That the Court erred in failing to find and conclude that the redelivery of the *Lake Sicamous* to libelant was delayed by 29 days, 22 hours and 20 minutes at Kure, Japan, by reason of congestion of the port created by respondent's having ordered too many ships into the port and contributed to by respondent's failure to provide for adequate storage facilities ashore at said port to receive the cargo aboard said ships.



5. That the Court erred in finding that the ports of Japan were congested everywhere as a result of efforts by the United States as a member of or in behalf of a concert of nations to get ammunition into Korea to meet a great national and international military emergency. (Finding of Fact XIII).

6. That the Court erred in finding that throughout the autumn of 1950 and early winter of 1951 and at all material times military operations in Korea had imposed heavy burdens on the facilities of all the military ports of Japan and had taxed the capacity of those ports, including in particular the ports of Moji and Kure, to handle military cargo and particularly to handle ammunition because of the special handling required by ammunition, the regulations applicable to it, the danger to vessels, ports, population and equipment and the precautions necessary in its movement and storage. (Finding of Fact XIV).

7. That the Court erred in finding that any delay suffered by the *Lake Sicamous* in completing her second voyage under the charter party and being re-delivered to her owners was the result of the operation of military priorities, the urgent needs of United States forces engaged in military operations and the Governmental operations of the United States or of the over-all command of the United Nations acting for the United States and other sovereignties which were in concert and carrying on those Governmental operations, whatever they were

properly called, whether they were the Korean War itself or whether they were war-connected police activities of a state or of an organization of member states. (Finding of Fact XVI).

8. That the Court erred in failing to find and conclude that the delay in the redelivery of the *Lake Sicamous* to libellant was proximately caused by the fault and neglect of respondent in failing to load and stow the vessel at Bangor, Washington, with reasonable diligence, and in failing to provide discharging facilities and discharge the vessel with reasonable diligence at Kure, Japan, and particularly that said redelivery was unreasonably delayed for 11 days, 17 hours and 15 minutes as the proximate result of the failure of respondent to load and stow the vessel with reasonable diligence at Bangor, Washington, and that said redelivery was unreasonably delayed for 29 days, 22 hours and 20 minutes as the proximate result of the failure of respondent to provide discharging facilities and discharge the vessel with reasonable diligence at Kure, Japan.

9. That the Court erred in finding that respondent exercised reasonable diligence in all the circumstances in its performance of charter party MST-197. (Finding of Fact XVII.)

10. That the Court erred in finding that libellant failed to perform the terms and conditions of Article 29 of the charter party by failing to make any demand for negotiations for a revision of the rate

of charter hire under the terms and conditions of Article 29. (Finding of Fact XVIII).

11. That the Court erred in failing to find and conclude that Article 29 of the charter party is not applicable to libelant's claim asserted in this libel.

12. That the Court erred in failing to find and conclude that in any event libelant properly demanded negotiations for a revision of the rate of charter hire under the terms and conditions of Article 29 of the charter party.

13. That the Court erred in failing to find and conclude that respondent waived and is estopped to assert any failure of libelant to comply with Article 29 of the charter party by refusing to entertain or act upon libelant's claim for damages for breach of charter party under Article 32 of the charter party (the Disputes Clause).

14. That the Court erred in failing to find and conclude that respondent waived and is estopped to assert any failure of libelant to comply with Article 29 of the charter party, and any such failure is excused, by the failure of respondent to object to the sufficiency of the notice given or demand made thereunder by libelant at a time when libelant could have cured any such insufficiency of notice or demand.

15. That the Court erred in failing to find the market rate of charter hire for vessels similar to the Lake Sicamous under terms and conditions similar to those of MST-197 during the period of un-

reasonable delay, and in failing to find the difference between that market rate of charter hire and the charter rate of hire.

16. That the Court erred in concluding that the Lake Sicamous was redelivered to libelant by respondent within the period provided in charter party MST-197 between libelant and respondent. (Conclusion of Law II).

17. That the Court erred in concluding that any and all delays suffered by the Lake Sicamous on her second voyage under the charter party and all of the acts and things done and omitted which were complained of by libelant in this action, wherever occurring, were things which were excused by reason of the fact that they were compelled by the war-like and lawful police and Governmental activities of the United States and of the United Nations and its member nations in their concerted support and contribution to the Korean War, and that none of the acts done which were complained by libelant were done under any other circumstances, and that for all such acts and things done and omitted the United States as a respondent in this action is not liable. (Conclusion of Law III).

18. That the Court erred in concluding that respondent has fully performed all the matters and things to be performed by it under the charter party and has committed no breach of its charter party with libelant. (Conclusion of Law IV).

19. That the Court erred in concluding that libelant has failed to prove the material allegations of its libel and has failed to prove any cause of action against respondent. (Conclusion of Law V).

20. That the Court erred in concluding that respondent is entitled to a decree dismissing the libel with costs. (Conclusion of Law VI).

21. That the Court erred in failing to find and conclude that respondent breached the charter party by failing to load and stow the vessel with reasonable diligence at Bangor, Washington, and by failing to provide discharging facilities and discharge the vessel with reasonable diligence at Kure, Japan.

22. That the Court erred in failing to find and conclude that the libelant is entitled to recover damages from respondent for 41 days, 15 hours and 35 minutes unreasonable delay in redelivery of the vessel to libelant, and that the measure of said damages should be the difference between the charter rate of hire and the market rate of hire during the period of unreasonable delay.

23. That the Court erred in entering its final decree on September 19, 1955, dismissing libelant's libel herein and awarding respondent its costs against libelant in the sum of \$63.00 and decreeing that libelant recover no costs against respondent.

24. That the Court erred in failing to enter a final decree herein that libelant have and recover



from respondent its damages computed as aforesaid and its taxable costs and disbursements.

BOGLE, BOGLE & GATES.

/s/ C. CALVERT KNUDSEN,

Proctors for Libelant.

Receipt of copy acknowledged.

[Endorsed]: Filed December 15, 1955.

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[Title of District Court and Cause.]

### COST BOND ON APPEAL

Know All Men by These Presents:

That the undersigned principal and the undersigned surety are held and firmly bound unto the United States of America in the penal sum of Two Hundred Fifty Dollars (\$250.00), lawful money of the United States, for the payment thereof to the benefit of whom it may concern; and that the said principal and the said surety bind themselves, their successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 15th day of December, 1955.

The conditions of this obligation are such, that

Whereas, Western Canada Steamship Company, Limited, libelant herein, has appealed to the United States Court of Appeals for the Ninth Circuit from



the Findings of Fact, Conclusions of Law and Final Decree entered herein by the United States District Court, Western District of Washington. Northern Division, on September 19, 1955.

Now, Therefore, if the above bounden principal shall pay all costs and expenses which shall be awarded against it by any Appellate Court, then this obligation to be void, otherwise to remain in full force and effect.

WESTERN CANADA STEAMSHIP COMPANY, LIMITED, A CORPORATION,

By BOGLE, BOGLE & GATES,

/s/ C. CALVERT KNUDSEN,

Its Proctors,

Principal.

[Seal]

FIREMANS FUND

INDEMNITY COMPANY,

By /s/ CLAUDE WAKEFIELD,

Its Attorney in Fact,

Surety.

This bond approved as to form and amount and sufficiency of surety.

Done in Open Court this 15th day of December, 1955.

/s/ JOHN C. BOWEN,

United States District Judge.

Receipt of copy acknowledged.

[Endorsed]: Filed December 15, 1955.

[Title of District Court and Cause.]

### CITATION ON APPEAL

United States of America,  
State of Washington,  
County of King—ss.

The President of the United States

To: United States of America, Respondent, and  
Charles P. Moriarty, United States Attorney,  
Its Proctor:

You are hereby cited and admonished to be and appear in the United States Court of Appeals for the Ninth Circuit forty (40) days after the date of this citation pursuant to an appeal duly taken and obtained from the Findings of Fact, Conclusions of Law and Final Decree entered herein by the United States District Court, Western District of Washington, Northern Division, on September 19, 1955, wherein Western Canada Steamship Company, Limited, is Appellant, and United States of America is Appellee, to show cause, if any there be, why the said Findings of Fact and Conclusions of Law and Final Decree should not be corrected and reversed and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable John C. Bowen, Judge of the United States District Court, Western Dis-

trict of Washington, Northern Division, this 15th day of December, 1955.

/s/ JOHN C. BOWEN,

United States District Judge.

Receipt of copy acknowledged.

[Endorsed]: Filed December 15, 1955.

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[Title of District Court and Cause.]

LIBELANT'S STATEMENT OF  
POINTS ON APPEAL

Comes now Western Canada Steamship Company, Ltd., libelant herein, and incorporates here by this reference its assignment of errors, heretofore served and filed herein, as its Statement of Points on Appeal.

BOGLE, BOGLE & GATES,

/s/ C. CALVERT KNUDSEN,

Proctors for Libelant.

Receipt of copy acknowledged.

[Endorsed]: Filed December 23, 1955.

[Title of District Court and Cause.]

STIPULATION AND ORDER FOR TRANSMITTAL OF ORIGINAL EXHIBITS TO COURT OF APPEALS

Stipulation

It is hereby stipulated and agreed by and between the parties hereto, by and through their respective proctors of record herein, that libelant's Exhibits 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 19 and 20, all of which were admitted in evidence at the trial of this cause, may be transmitted to the United States Court of Appeals for the Ninth Circuit in their original form for use in connection with the appeal herein.

/s/ CHARLES P. MORIARTY,  
United States Attorney,

/s/ F. N. CUSHMAN,  
Assistant U. S. Attorney,  
Proctors for Respondent.

BOGLE, BOGLE & GATES,  
/s/ C. CALVERT KNUDSEN,  
Proctors for Libelant.

Order

Purusuant to the foregoing Stipulation, it is hereby

Ordered that libelant's Exhibits 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 19 and 20, which were admitted in evidence at the trial of this cause, shall be transmitted

in their original form to the United States Court of Appeals for the Ninth Circuit for use in connection with the appeal herein.

Done in Open Court this 23rd day of December, 1955.

/s/ JOHN C. BOWEN,  
United States District Judge.

Presented and approved by:

/s/ C. CALVERT KNUDSEN, of  
BOGLE, BOGLE & GATES,  
Proctors for Libellant.

Approved and notice of presentation hereby expressly waived:

/s/ F. N. CUSHMAN,  
Assistant U. S. Attorney,  
Proctor for Respondent.

[Endorsed]: Filed December 23, 1955.

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[Title of District Court and Cause.]

STIPULATION AND ORDER FOR  
EXTENSION OF TIME

Stipulation

It is hereby stipulated and agreed by and between the parties hereto, by and through their respective proctors of record herein, that the time within which the record and transcript on appeal shall be filed with the United States Court of Appeals for the Ninth Circuit, and the appeal there docketed, may

be extended to and including March 1, 1956, which is a day not more than 90 days from the date of filing the notice of appeal herein.

/s/ CHARLES P. MORIARTY,  
United States Attorney,

/s/ F. N. CUSHMAN,  
Assistant U. S. Attorney,  
Proctors for Respondent.

BOGLE, BOGLE & GATES,  
/s/ C. CALVERT KNUDSEN,  
Proctors for Libellant.

### Order

Pursuant to the foregoing Stipulation, it is hereby

Ordered that the time within which the record and transcript on appeal herein shall be filed with the United States Court of Appeals for the Ninth Circuit and the appeal there docketed be and the same hereby is extended to and including March 1, 1956.

Done in Open Court this 23rd day of December, 1955.

/s/ JOHN C. BOWEN,  
United States District Judge.

Presented and approved by:

/s/ C. CALVERT KNUDSEN, of  
Bogle, Bogle & Gates,  
Proctors for Libellant.



Approved and notice of presentation hereby expressly waived:

/s/ F. N. CUSHMAN,

Assistant U. S. Attorney,  
Proctor for Respondent.

[Endorsed]: Filed December 23, 1955.

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In the District Court of the United States for the  
Western District of Washington, Northern Division

In Admiralty No. 15848

WESTERN CANADA STEAMSHIP COMPANY, LIMITED, a Corporation,

Libelant,

vs.

UNITED STATES OF AMERICA,

Respondent.

Before: The Honorable John C. Bowen, District Judge.

TRANSCRIPT OF PROCEEDINGS AT TRIAL

August 3, 1955—10:00 A.M.

Appearances:

STANLEY B. LONG, ESQ. and  
C. CALVERT KNUDSEN, ESQ., of  
BOGLE, BOGLE & GATES,

Appearing for and on Behalf of Libelant.

FRANK N. CUSHMAN,

Assistant U. S. Attorney, and

GRAYDON S. STARING, ESQ.,

Appearing for and on Behalf of Respondent.

The Court: Are parties and counsel ready to proceed in Cause No. 15848? Mr. Cushman?

Mr. Cushman: Your Honor, I would like to introduce Mr. Staring. He has appeared before you before. He is assistant to Keith Ferguson, Special Assistant to the Attorney General, head of the Admiralty Section on the West Coast.

The Court: Mr. Staring, the Court again welcomes you and advises that it is agreeable to the Court for you to appear as assisting counsel in this case without however displacing local counsel and that your doing so is subject to the rules of Court regarding the conduct of counsel as such [2\*] rules affect the conduct of local counsel.

Mr. Staring: It is a pleasure to appear before Your Honor.

The Court: In the case of Western Canada Steamship Company, Limited, vs. United States, No. 15848 in Admiralty, are the parties and counsel ready to proceed with that trial?

Mr. Knudsen: Libelant is ready to proceed, your Honor, and there are certain motions pending which are to be disposed of at the commencement of the trial. I think the first in order of time is the libelant's motion for the production of certain documents.

The Court: I wish you would not proceed to argue. I want to ask opposing counsel the same question to which you have apparently made response.

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\*Page numbering appearing at foot of page of original Reporter's Transcript of Record.

Mr. Staring: Respondent is ready to proceed, Your Honor.

The Court: You may now proceed with the matters mentioned by Mr. Knudsen or any other matters pertinent to the trial.

Mr. Knudsen: Thank you, Your Honor.

The first matter was libelant's motion to produce, and I understand that counsel for the Government has with him his file in this matter, and he will make it [3] available to me at the recess. So I will reserve my motion until I have had a chance to examine what has been produced. I don't believe there will be any difficulty with that.

The Court: May the record show agreeably to counsel now present that each and all of the litigants in this case, which is Admiralty Cause No. 15848, are present and/or represented by counsel?

Mr. Knudsen: Yes, Your Honor.

The Court: Is that agreeable to respondent?

Mr. Staring: That is agreeable to respondent.

The Court: I ask you to respond audibly to the Court's questions.

You may proceed.

Mr. Knudsen: The second matter insofar as libelant is concerned is libelant's motion for leave to amend the libel by increasing the amount of damages and increasing the prayer, and I was advised this morning by Mr. Staring that the Government has no objection to that amendment.

The Court: Any objection?

Mr. Staring: If Your Honor please, that is correct with the condition that I should like to reserve

my agreement to that until such time as respondent's motion for leave to file an amended answer [4] is disposed of.

The Court: The Court denies the request for postponement. The request for amendment is granted, and I wish you to suggest how most conveniently may the amendment be effected? May it be done by interlineation of the libel?

Mr. Knudsen: Yes, if the Court please, it could be done in that manner. It could be interlined in paragraph V of the libel.

The Court: Will you suggest the words, and I will write them down on a piece of paper and consider them?

Mr. Knudsen: In the next to the last line——

The Court: It is line 29 on page 2 of this original form on file. That is the original libel.

Mr. Knudsen: In the original libel, if the Court please, at line 4 on page 3——

The Court: Wait just a moment. I wish you would pause on the first thought you expressed until we get through with that. What is it you want interlined in paragraph No. V?

Mr. Knudsen: I would like to substitute the amount of \$55,200.00.

The Court: Mr. Cushman, is it your understanding there is only one respondent, namely the United States [5] of America?

Mr. Cushman: Yes, Your Honor.

The Court: Does the respondent wish the Court

to deem that the original libel as amended be denied by the present form of the respondent's answer?

Mr. Cushman: Yes, Your Honor.

The Court: Let the record show that. That will be in effect irrespective of any amendment or further amendment of the answer.

Now, I think, Mr. Staring, that you started to make a statement that might be responsive to this particular amendment, did you? If so, I will hear you now.

Mr. Staring: There was also pending, Your Honor, a motion of respondent for leave to file an amended answer.

The Court: Well, does this not cover the proposed amendment?

Mr. Staring: No. The proposed amendment——

The Court: Then, is there any reason why we should not hear that at this time? We want to get the pleadings settled.

Proceed, Mr. Staring.

Mr. Staring: If Your Honor please, the Government by its motion proposed to file an amended answer [6] setting forth more fully its defenses.

The Court: Would you kindly advise the Court and opposing counsel what sort of amendment it is you wish to make, the substance and effect of your proposed amendment?

Mr. Staring: May I start by saying that we have agreed with opposing counsel that we will strike two of the proposed amendments which were stated in our proposed amended answer?



The Court: Have you done that in the form that you propose to file?

Mr. Staring: No, we have not, Your Honor.

The Court: Why do you not proceed to do that? Let us get going on the file. Mark out what you told counsel you would mark out. Get it done and then serve him with a copy of what you propose to file. The Court will then consider whether or not it is appropriate to file it.

Mr. Staring: The original, if Your Honor please, is in the hands of the Clerk.

(Whereupon, the document is returned to Mr. Staring by the Clerk.)

The Court: I wish counsel would confer with each other so as to become advised of the details involved.

(Whereupon, a conference was had between counsel [7] at counsel table.)

The Court: Now, do you ask the Court to strike from the respondent's original answer filed in this action under date of February 15, 1955, all of paragraph XIV on page 5, and also the Court is advised counsel for the respondent wishes to strike all of paragraph——

Mr. Staring: If Your Honor please, not Article XIV, but beginning with Article XV on page 5.

The Court: You do not wish to strike XIV?

Mr. Staring: We do not wish to strike XIV.

The Court: The Court now understands counsel for respondent asks to strike all of paragraph numbered XV.



Mr. Staring: And XVI.

The Court: Also paragraph numbered XVI.

Mr. Staring: And XVII.

The Court: And all of paragraph XVII.

Mr. Staring: And all of XVIII.

The Court: And all of paragraph numbered XVIII. Is that what you wish?

Mr. Staring: That is right, Your Honor.

The Court: Is there any objection to the Court granting that request?

Mr. Knudsen: No, Your Honor. [8]

The Court: That request is granted, and it is so ordered.

Is there anything else you wish to strike, Mr. Staring?

Mr. Staring: There is nothing more, Your Honor, that I wish to strike.

The Court: Would counsel on both sides initial the physical means employed by the Court to strike? Initial it in the margin if you approve of what has been done.

The Clerk says that counsel for the respondent wishes to strike, also, all of the statements made in lines 12 to 27, inclusive, on page 6 of the answer, which is: "Further answering unto the libel," etc., and then all of paragraph XVII and XVIII, is that right?

Mr. Staring: That is correct, Your Honor.

The Court: The Court grants that request.

Is there any other matter of amendment now, Mr. Staring? Does that complete your request regarding amendments?

Mr. Staring: That does complete the request with regard to striking portions.

The Court: Well, what else do you propose by way of amendment? [9]

Mr. Staring: We propose to amend the answer to set up a defense.

The Court: You had better file that.

Mr. Staring: It is on file, Your Honor.

The Court: Where is it?

Mr. Staring: It is in the proposed amended answer.

The Court: Is that on file?

Mr. Cushman: Yes, Your Honor.

The Court: Is there anything else in that proposed amendment other than what you now refer to as some additional matter which you wish to effectuate?

Mr. Staring, will you let Mr. Cushman say what the Government wants? I want to proceed, Mr. Cushman.

Mr. Cushman: Well, the proposed amended answer——

Mr. Staring: Well the proposed amended answer is on file and has been since February, and it is that answer which we seek to file.

The Court: Let it be filed.

Does that cover the matter?

Mr. Staring: That does, Your Honor.

The Court: Have you a copy of it, Mr. Knudsen?

Mr. Knudsen: Yes, Your Honor, and I have certain objections which I would like the Court to hear.

The Court: Well, strike the Court's statement about it being filed, and I will hear your objection. [10]

Mr. Knudsen: Well, the amended answer does two things.

(Argument.)

The Court: The request to file the amended answer is granted, and it is now filed.

Now, if you have any exceptions to argue regarding it, Mr. Knudsen, I will hear them.

Mr. Knudsen: If the Court please, the first affirmative defense in the amended answer raises as a defense the alleged failure of libelant to proceed under a provision of the charter party regarding adjustments of charter hire before bringing this action. The respondent takes the position that failure to proceed under that clause of the charter with the contracting officer to ask for increase in charter hire is a condition precedent to this action, much the same as the standard disputes clause would be.

Our position on that is this: That in this case, as was alleged and has been admitted, a claim for additional charter hire was presented to the contracting officer and was denied by him on the ground that he had no authority to decide a claim arising from a breach of contract, and under the authorities that are applicable, such a ruling by the contracting officer waives any defense by the [11] Government based upon provisions of the charter party or conditions preceding, such as going through certain administrative proceedings.

The second objection to the merits of that defense is that the charter provision does not apply to an action for damages for breach of contract on its face. It simply applies to an adjustment of charter hire during the normal period of the charter. We are asking in this case damages for breach of the charter by wrongfully holding the vessel over and beyond the charter term, and we urge——

The Court: It used to be demurrage. Is it anything more than that now?

Mr. Knudsen: That is often the common term. Your Honor.

Therefore, we feel the first affirmative defense is not good in law on its face, and our exception should be sustained.

The Court: The exceptions are overruled, that is without prejudice to renewing the sufficiency of the objections in any proper form, among others, the sufficiency of the proof. It may turn out that the Court might not be convinced that the proof under the law was sufficient, and may be part of the reason for it would be that the law forbids the proof to [12] have any effect as you contend now as a matter of law it has none. The Court may conceivably take that view after hearing all the evidence, but I would rather hear the evidence.

Is there anything else on exceptions you wish to argue?

Mr. Staring: I have nothing further, Your Honor.

The Court: I ask counsel then to proceed. It will be appropriate for counsel on each side at this

stage to make their respective opening statements of what they think the proof will be in this case. I ask counsel not to comment on the evidence in making that opening statement. Merely give a brief narrative form or outline of what you think will be received before the Court in the way of evidence.

(Whereupon, opening statements were made by Mr. Knudsen for the libelant and by Mr. Staring for the respondent.)

The Court: I ask the libelant to proceed with the libelant's case in chief.

Mr. Knudsen: I would like to call as the first witness Mr. H. E. A. Ford. [13]

### H. E. A. FORD

called as a witness by and on behalf of libelant, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Knudsen:

Q. Will you state your full name and address for the benefit of the reporter?

A. Hubert Edward Arthur Ford.

The Court: What is that?

The Witness: The full name?

The Court: I just want you to repeat what you said. I am not familiar with your dialect yet. What is your name?

The Witness: Hubert Edward Arthur Ford.

The Court: You may proceed.



(Testimony of H. E. A. Ford.)

Q. (By Mr. Knudsen): Your address?

A. 1999 Nelson Street, Vancouver, British Columbia.

The Court: 1909.

The Witness: 1999.

Q. (By Mr. Knudsen): What is your occupation?

A. Shipping executive, specifically secretary of my [14] company.

Q. And what company is that?

A. Western Canada Steamship Company, Limited.

Q. The libellant herein? A. Yes.

Q. Would you briefly outline your present duties with the Western Canada Steamship Company, Limited?

A. Well, as secretary of the company and executive and also director, but principally secretary of the company, I am in charge of all the documents and minutes, keeping of minutes, and other executive matters which may be delegated to me by the Board of Directors in certain instances through the chief executive officer who is the president of the company.

Q. What is the business of the Western Canada Steamship Company, Limited?

A. They are ocean carriers of freight, what you might term common carriers.

Q. Does the company own vessels?

A. Yes.

Q. Specifically, during 1950 and 1951 did it own



(Testimony of H. E. A. Ford.)

the S.S. Lake Sicamous?           A. Yes.

Q. And does it charter those vessels?

A. Yes. It charters them from time to time. [15]

Q. Will you briefly explain how those charters are effected, that is to say, by means of what agents and subagents?

A. Well, Western Canada Steamship Company itself does not primarily carry out the negotiations for these charters. These charters or the booking of other cargo on berth terms is effected by general agents of ours, of whom there are four, Anglo-Canadian Shipping Company, Limited, Canada Shipping Company, Limited, Empire Shipping Company, Limited, and North Pacific Shipping Company, Limited.

Q. Was one of those companies the agent of Western Canada Steamship Company with respect to the charter involved in this lawsuit?

A. Yes, the Anglo-Canadian Shipping Company.

Q. And did they employ any subagents in respect to that charter party?

A. Yes, J. H. Winchester & Company.

Q. Where is that?           A. In New York.

Mr. Knudsen: Mr. Bailiff, will you have that marked?

(Charter Party of the S.S. Lake Sicamous marked Libelant's Exhibit 1 for Identification.) [16]

Q. (By Mr. Knudsen): Handing you what has been marked for identification as Libelant's Ex-

(Testimony of H. E. A. Ford.)

hibit No. 1, I will ask you if you can identify that document?      A. Yes.

Q. What is it?

A. It is a charter party of the Lake Sicamous, and also an amendment to the contract, Revision No. 4 there, Revisions No. 3, 2 and 1.

Mr. Staring: If Your Honor please, the Government would be willing to stipulate that that is the original charter party in effect on the Lake Sicamous.

Mr. Knudsen: Thank you, Mr. Staring.

I offer that in evidence if the Court please.

The Court: It is admitted.

(Libelant's Exhibit 1 received in evidence.)

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## LIBELANT'S EXHIBIT NO. 1

### Article 1. Description of Vessel:

(a) Name: S.S. Lake Sicamous.

(b) Home Port: Vancouver, B. C., Canada.

(c) Classed: A-1 Lloyds.

(d) Engines: Of..... Normal..... Brake, 2500 Shaft, or Indicated H.P., as certified by classification society.

(e) Speed: Capable of maintaining under normal conditions an average sea speed of about 10 knots in moderate weather when fully laden, on an

(Testimony of H. E. A. Ford.)

Libelant's Exhibit No. 1—(Continued)

average consumption of 28 tons (of 2240 lbs.) standard grade "C" or equivalent oil fuel per 24 hours.

(f) Net Registered tonnage: 4302.

(g) Deadweight: Deadweight capacity of the Vessel is about 10,750 tons of 2240 lbs., including cargo, bunkers, water and stores on assigned summer mean draft of 27 feet 8¾ inches in salt water corresponding to a load line summer freeboard of 9 feet 9½ inches, under present International Load Line Regulations. The Vessel's load line is marked and so placed as to admit of her being safely loaded to such draft.

(h) Bale cubic capacity for cargo (cubic feet under deck according to ship's plan but not guaranteed by Owner.) 485,000, including deep tanks number (2) in No. 4 Hold.

(i) Amount and location of permanent ballast carried: None.

(j) Bunker capacity in tons of 2240 lbs. Double bottoms & settling tanks, 900 tons; Deep tanks 650 tons.

(k) Number of hatches and size of hatch openings: Five: #1, 33 feet 9 inches x 20 feet 0 inches; #2, 35 feet 0 inches x 20 feet 0 inches; #3, 20 feet 0 inches x 20 feet 0 inches; #4, 35 feet 0 inches x 20 feet 0 inches; #5, 25 feet 0 inches x 20 feet 0

(Testimony of H. E. A. Ford.)

Libelant's Exhibit No. 1—(Continued)

inches; Deep Tanks #4 7 feet 3 inches x 4 feet 0 inches.

(l) Number of winches and derricks with capacity of each: 2 winches & 2 derricks at each hatch; #1, 3, 4 & 5: 2 derricks of 5 tons each; #2, 2 derricks of 10 tons each.

(m) Number and location of 'tween decks: One 'tween deck each in all 5 cargo holds.

Article 2. Place and Dates of Delivery and Redelivery, etc.

(a) Place of Delivery: Seattle, Washington.

(b) Date of Delivery: 2 August, 1950.

(c) Cancellation Date: 5 August, 1950.

(d) Redelivery: Any U. S. West Coast Port.

(e) Charter Hire: \$1125.00 per diem.

(f) Fuel on board at time of delivery: Per instructions of DEPCOMSTS, North Pacific.

\* \* \*

Article 5. Period of the Charter.

(a) This Charter shall be for a period of about 120 days from the time of delivery of the Vessel or to the termination of the voyage current at termination date. ~~The Charterer shall have the privilege of continuing this Charter for a second period of~~

(Testimony of H. E. A. Ford.)

Libelant's Exhibit No. 1—(Continued)

~~about 120 days upon giving the Owner or his agent written notice of Charterer's election to continue this Charter, 20 days prior to the expiration of the original period of this Charter.~~

(b) The Charterer shall have the privilege of terminating this Charter at any time upon giving not less than 20 days notice of termination to the Owner, and redelivery shall be made in accordance with the provisions of Article 27.

\* \* \*

#### Article 8. Loading and Discharging.

(a) The cargo or cargoes shall be laden and discharged in any dock or at any wharf, place or open roadstead that Charterer may direct, provided the Vessel can lie always safely afloat at any time of tide except at such places where it is customary for similar size vessels to lie safely aground.

(b) The Charterer shall pay all expenses directly connected with the loading and discharging of the cargo including stevedoring, wharfage, checking and tallying, winchmen, heavy lifts, dumping, stowing, securing and trimming, and removal of strong backs with shore equipment where the use of shore equipment is not necessitated by a structural or mechanical defect in the vessel. Unless otherwise provided herein the Charterer shall provide necessary dunnage and shifting boards, also any extra fittings or materials requisite for a spe-



(Testimony of H. E. A. Ford.)

Libelant's Exhibit No. 1—(Continued)

cial trade or unusual cargoes, but the owner shall allow the Charterer the use of any dunnage, shifting boards and other fittings or materials already on board the vessel. The Charterer shall have the privilege of using shifting boards for dunnage, but if the vessel's shifting boards are used as dunnage the Charterer shall make good any damage to or shortage of such shifting boards on redelivery of the vessel. If the Charterer elects or is requested by the Owner to remove dunnage and fittings placed on board by the Charterer, the cost of removal and discharge shall be borne by the Charterer.

\* \* \*

(f) Cargo shall be loaded, stowed, trimmed, secured and discharged by the Charterer under the Master's supervision.

\* \* \*

## Article 12. Charter Hire.

(a) Except as otherwise provided herein, the Charterer shall pay for the use and hire of the vessel at the rate stated in paragraph (e) of Article 2, per 24 hour day or pro rata part thereof from the time of her delivery to the Charterer in accordance with Article 4 to the time of her redelivery in accordance with Article 27. However, should the Vessel be lost or become a constructive total loss under the terms of the American Institute Time Form Marine Hull Policy, hire shall cease at noon of the



(Testimony of H. E. A. Ford.)

Libelant's Exhibit No. 1—(Continued)

day of her loss or constructive total loss under the terms of the American Institute Time Form Marine Hull Policy, and if missing hire shall cease at noon of the last day the Vessel was heard from. Charter hire under this subparagraph shall be based on elapsed time measured by Greenwich Mean Time.

\* \* \*

#### Article 21. Exceptions.

The act of God, enemies, fire, restraint of princes, rulers or people, and all dangers and accidents of the seas, rivers, machinery, boilers and steam navigation, and errors of navigation throughout this Charter Party always mutually excepted. The Vessel shall have the liberty to sail with or without pilots, to tow and to be towed, to assist vessels in distress, and to deviate for the purpose of saving life or property, or to go into drydock or into ways with or without cargo on board.

\* \* \*

#### Article 27. Redelivery.

(a) Unless lost, the Vessel shall be redelivered in accordance with paragraph (d) of Article 2. The Charterer shall give the Owner not less than 20 days written notice of the Vessel's expected date of redelivery and the probable port of redelivery. It shall be the duty of the Owner to minimize his expenses during any period while the Vessel is in port

(Testimony of H. E. A. Ford.)

Libelant's Exhibit No. 1—(Continued)

subsequent to the receipt of the notice of redelivery and prior to the actual redelivery, crediting to the Charterer any savings.

\* \* \*

## Article 29. Revision of Rate of Hire.

### (a) General Revision.

(1) The rate of hire specified in Article 2 may be increased or decreased in accordance with this Article.

(2) Demand for negotiation. At any time subject to the limitations specified in this Article, either the Charterer or the Contractor may deliver to the other a written demand that the parties negotiate to revise the rate of hire under this Charter Party. No such demand shall be made before sixty days after the date of execution of this Charter Party, and thereafter neither party shall make a demand having an effective date within one-hundred-twenty days after the effective date of any prior demand, provided, however, that this limitation shall not apply in any manner to a demand for negotiation on the basis of an "adjustment in wages." A demand for negotiation on the basis of an "adjustment in wages" will not be barred by the time limitations set out above, nor will such a demand operate as a bar, by reason of those time limitations, to a demand for general negotiation. (The term "adjustment in wages" as used in this Article means a change in

(Testimony of H. E. A. Ford.)

Libellant's Exhibit No. 1—(Continued)

the wages, salaries or other terms or conditions of employment of personnel upon the Vessel operated by the Contractor under this Charter Party, which shall be generally applicable to the shipping industry on the coast of the United States from which the Vessel under this Charter customarily operates.) Each demand for negotiation shall specify a date (identical with or subsequent to the date of delivery of the demand) on which any resulting revision of the rate of hire shall be effective. This date is hereinafter referred to as "the effective date of the revision of hire." Any demand made under this Article, if made by the Contractor, shall state briefly the ground or grounds therefor and shall be accompanied by the statements and data referred to in paragraph (3) of this Article. If the demand is made by the Charterer, such statements and data will be furnished by the Contractor within thirty days of the delivery of the demand.

(3) Submission of Data. At the time specified or provided in paragraph (2) of this Article 29(a) the Contractor shall submit: (i) A new estimate and breakdown of the per diem cost and the rate of hire under this Charter Party itemized as far as practicable on the basis used in connection with the original negotiation of this Charter Party. (ii) An explanation of the differences between the original (or last preceding) estimate and the new estimate. (iii) Such relevant operating data, cost records, over-

(Testimony of H. E. A. Ford.)

Libelant's Exhibit No. 1—(Continued)

head absorption reports and accounting statements as may be of assistance in determining the accuracy and reliability of the new estimate. (iv) A statement of the experienced costs of operation under this Charter Party to the extent that they are available at the time of negotiating the revision of hire hereunder, and, (v) Any other relevant data usually furnished in negotiating hire for a new Charter Party. The Charterer may make such examination of the Contractor's accounts, records and books as the Contracting Officer may require and make such audit thereof as the Contracting Officer may deem necessary.

#### (4) Negotiation.

(A) Upon the filing of the statements and data required by paragraph (3) of this Article, the Contractor and the Contracting Officer will negotiate in good faith to agree upon a rate of hire to be effective on the effective date of the revision of hire. Negotiations for revisions of hire under this Article will be conducted on the same basis employing the same types of data, including without limitations, comparative prices, comparative costs and trends thereof, as in negotiating hire for a new Military Sea Transportation Service contract.

(B) After such negotiation the agreement reached will be evidenced by a supplemental agreement to this Charter Party stating the revised rate

(Testimony of H. E. A. Ford.)

Libelant's Exhibit No. 1—(Continued)

of hire to be effective on the effective date of the revision of hire (or such other later date as the parties may fix in such supplemental agreement).

(5) Disagreements. If, within thirty days after the date on which the statements and data are required to be filed pursuant to paragraph (2) of this Article (or such further period as may be fixed by written agreement) the Contracting Officer and the Contractor fail to agree to a revised rate of hire, the failure to agree shall be deemed to be a disagreement as to a question of fact which shall be disposed of in accordance with Article 32 (Disputes) and the rate of hire so fixed shall remain in effect for the balance of the Charter Party notwithstanding any other provision of this Article.

(6) Payments. Until the revised rate of hire shall have become effective in accordance with this Article, the rate of hire in force at the time the demand was made for negotiation shall be paid, subject to appropriate later adjustment made pursuant to paragraph (4) or (5) of this Article.

(b) Revision of Hire Upon Change of Wages or Employment Conditions.

(1) The rate of hire specified in Article 2 may be revised in accordance with this Article 29(b). As used in this Article, the term "adjustment in wages" means the same as in Article 29(a).



(Testimony of H. E. A. Ford.)

Libelant's Exhibit No. 1—(Continued)

(2) Condition Precedent. If all the following conditions are satisfied the Contracting Officer shall enter into negotiations with the Contractor for the revision of the rate of hire under this contract, but only to the extent set forth in paragraph (3) of this Article 29(b).

(A) The Contractor shall advise the Contracting Officer in writing of any request on behalf of the employees of the Contractor for any adjustment in wages which shall materially affect the costs of performing this contract. This advice shall be given within 20 days after the Contractor shall learn that such request has been made. In the event that the request has been made prior to the execution of this Charter Party and has not been finally acted upon, the written advice of such request shall be given at the time of execution of this Charter Party.

(B) The Contractor, prior to the expiration of 30 days (or such greater period as may be agreed upon in writing within said 30 days) after the date of the collective bargaining agreement, arbitration award or other document evidencing the adjustment in wages, but, in any event, prior to the expiration of one year after the date specified for the expiration of this Charter Party as it may from time to time be amended, shall submit to the Contracting Officer the following: (i) A true copy of the collective bargaining agreement, arbitration award or

(Testimony of H. E. A. Ford.)

Libelant's Exhibit No. 1—(Continued)

other document providing for the adjustment in wages. (ii) A written demand that the parties negotiate to revise the rate of hire during a period stated in the demand. That period shall not commence at a date earlier than the effective date of the adjustment in wages. That period shall not extend beyond the expiration of this Charter Party as it may be from time to time amended. (iii) Estimates of the probable effects of such adjustment in wages upon the Contractor's costs of performing this Charter Party during the period stated in the demand. These estimates shall give due effect to estimates of costs incurred up to the beginning of such period and to the fact that the full effect of such adjustment will not normally be reflected immediately in the cost of performance of this Charter Party. These estimates shall be accompanied by estimates of the effect of such adjustment in wages on the direct and indirect labor costs during the stated period. (iv) Proposed revised rate of hire for this Charter Party during the stated period.

(3) Negotiations. Upon the filing of the estimates and data required by paragraph (2)(b) of this Article 29(b) the Contracting Officer and the Contractor will negotiate promptly in good faith to agree upon revised rate of hire for this Charter Party during the stated period which has been affected by such adjustment in wages. In the negotiation the Contracting Officer and the Contractor in

(Testimony of H. E. A. Ford.)

Libelant's Exhibit No. 1—(Continued)

good faith will estimate the effect of such adjustment upon the cost of performance during such period. It is recognized that it will not be practicable to make precise computations of the effect of any such adjustment on the Contractor's costs and, therefore, it is the intention of the parties that negotiation and determination of any revision of the rate of hire under this Article 29(b) shall be on the basis of the estimates of the effect of the adjustment in wages. The rate of hire for the stated period will be revised to reflect, to an extent which is deemed reasonable under all the circumstances, such estimated effect on costs.

(4) Limitation on Revision. The Contractor agrees that it will not request and shall not be entitled to receive a revision of the rate of hire under this Article 29(b) except to the extent that such adjustment in wages operates to make the rate of hire under this Charter Party less than a fair and reasonable one under all the circumstances. In no event shall any such revision exceed the amount of the estimated effect of such adjustment in wages on the Contractor's costs hereunder during the stated period specified in the written demand mentioned in subparagraph (2)b(ii) of this Article 29(b).

(5) Supplemental Agreement. Any agreement entered into under this Article 29(b) will be incorporated in a supplemental agreement to this Charter Party which shall be subject to the written ap-

(Testimony of H. E. A. Ford.)

Libelant's Exhibit No. 1—(Continued)

proval of the Contract Clearance Board, Office of Navy Materials, and shall state (a) the revised rate of hire to be in effect during a specified period to be set forth in such agreement, and (b) the method of adjusting the payments therefor.

(6) Disagreements. If within 30 days after the time for filing the estimates and data required by paragraph (2)b of this Article 29(b) (or such further period as may be fixed by written agreement) the Contracting Officer and the Contractor fail to agree to revised prices, the failure to agree shall be deemed to be a disagreement as to a question of fact which shall be disposed of in accordance with Article 32 (Disputes).

\* \* \*

#### Article 32. Disputes.

Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail, or otherwise furnish a copy thereof to the Contractor. Within 30 days from the date of receipt of such copy, the Contractor may appeal by mailing or otherwise furnishing to the Contracting Officer a written appeal addressed to the Secretary, and the decision of the Secretary or his duly authorized representative for the hearing of such appeals

(Testimony of H. E. A. Ford.)

Libelant's Exhibit No. 1—(Continued)

shall be final and conclusive; provided that, if no such appeal is taken, the decision of the Contracting Officer shall be final and conclusive. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the Contracting Officer's decision.

\* \* \*

Admitted in evidence August 3, 1955.

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Mr. Knudsen: Will you have this marked, Mr. Bailiff?

The Clerk: Libelant's Exhibit 2.

(Official Form No. 19 of the Canada Registry of Shipping marked Libelant's Exhibit No. 2 for Identification.) [17]

The Court: Are you able to stipulate with counsel on that?

Mr. Staring: Yes. We would be pleased to stipulate that this is a correct copy of the transcript of register of the Lake Sicamous.

The Court: What do you call it, Mr. Knudsen? Have you a more accurate designation of its nature in the form of a name that will reflect its meaning?



(Testimony of H. E. A. Ford.)

Mr. Knudsen: Yes, Your Honor. This is Official Form No. 19 of the Canada Registry of Shipping issued by the Canadian Department of Transport. It is entitled "A Transcript of Register for Transmission to Registrar General of Shipping and Seamen." It is a document that gives the particulars of the vessel, her official number, and the various details concerning her.

The Court: Well, is it not a certified copy of the official register of this vessel?

Mr. Knudsen: Yes, it is, Your Honor, and I offer it in evidence.

The Court: It is admitted.

(Libelant's Exhibit No. 2 received in evidence.) [18]

The Court: I ask counsel in each instance, if you think you can do it without objection from opposing counsel, to give the document a name which you believe—one word if possible—which you believe reasonably reflects the nature of the information contained in the document or in the exhibit in each instance.

Mr. Knudsen: Thank you, Your Honor.

The Clerk: Libelant's Exhibit 3.

(Delivery certificate and redelivery certificate marked Libelant's Exhibit 3 for identification.)

The Court: Mr. Knudsen, how many of these documents has opposing counsel seen, if you know?

(Testimony of H. E. A. Ford.)

Mr. Knudsen: I don't know what his files contain, your Honor, but I assume his file contains counterpart originals of all of these documents.

The Court: I wish you would bring out all of the documents you expect to offer through this witness and let counsel see them, every one of them. They do not have to have the Clerk's marks on them at this time.

Mr. Staring: Your Honor, I am prepared to stipulate that the delivery and redelivery certificate—— [19]

The Court: Which has been marked Libelant's Exhibit 3—Mr. Knudsen, do you care to look at it and give it a name?

Mr. Knudsen: Your Honor, Libelant's Exhibit 3 is the delivery certificate of the vessel to the United States by the libelant and the redelivery of the vessel by the United States to the libelant. It is delivery certificate and redelivery certificate, and I offer the same in evidence.

The Court: It is now admitted.

(Libelant's Exhibit No. 3 received in evidence.)

The Court: I wish I had time to have pre-trial procedures in all these cases. Our future ambition is to provide that in every case that has any exhibits or is expected to have.

Mr. Knudsen, you might assist counsel if you would step to counsel table near him and assist him in identifying the papers that you expect to use.

(Testimony of H. E. A. Ford.)

(Mr. Knudsen and Mr. Staring confer at counsel table.)

The Clerk: Libelant's Exhibits 4, 5 and 6.

(Copy of letter from Commander [20] Carl to J. A. Winchester & Co., November 19, 1950, marked Libelant's Exhibit No. 4 for identification.)

(Request for notice of claim marked Libelant's Exhibit No. 5 for identification.)

(Notice of claim marked Libelant's Exhibit No. 6 for identification.)

Mr. Knudsen: If the Court please, Libelant's Exhibit 4 is a letter—it is a copy of a letter from Commander Carl, the contracting officer, to J. A. Winchester & Co. in New York, agent of the libelant, giving notice of redelivery. It is dated November 19, 1950, I believe.

The Court: Repeat.

Mr. Knudsen: It is November 19, 1950. I am not quite positive of that date.

The Clerk: It is December.

Mr. Staring: There is no objection to it being received in evidence.

The Court: Will you wait just a moment?

Will you read Mr. Knudsen's statement?

(Whereupon, the court reporter read as follows: "It is November 19, 1950. I am not quite positive [21] of that date.")

(Testimony of H. E. A. Ford.)

The Court: What I am interested in is not the details of from and to whom as I am the nature of it, which is encompassed in the last two words I think in Mr. Knudsen's statement. I do not have the time to write all those things down. I just want a name for the paper so in the future when it is mentioned the Court will be reminded and can more easily physically obtain access to the particular exhibit.

Mr. Knudsen: Yes, your Honor. I appreciate that.

The Clerk: Libellant's Exhibits Nos. 7, 8, 9, 10, 11 and 12 are marked.

(Rejection of voucher by Commander Carl marked Libellant's Exhibit No. 7 for identification.)

(Denial of authority over claim by contracting officer marked Libellant's Exhibit No. 8 for identification.)

(Advice of transfer of claim to the Comptroller General or General Accounting Office marked Libellant's Exhibit No. 9 for identification.)

(Recommendation regarding claim marked Libellant's Exhibit No. 10 for [22] identification.)

(Advice re status of the claim marked Libellant's Exhibit No. 11 for identification.)

(Testimony of H. E. A. Ford.)

(Denial of claim marked Libelant's Exhibit No. 12 for identification.)

The Court: Now, what is No. 5, if you know?

Mr. Knudsen: No. 5, if the Court please, is a letter from libelant to J. A. Winchester & Co. requesting that that agent give notice to the Government that libelant will claim increase in charter hire, and I might say that it might be denominated "request for notice of claim."

The Court: Request for notice of claim?

Mr. Knudsen: Yes.

Libelant's Exhibit 6 might be denominated the notice of claim which was forwarded by J. A. Winchester to Commander Carl, the contracting officer.

The Court: And 7?

Mr. Knudsen: Libelant's 7 is a rejection of voucher by Commander Carl.

The Court: It would not be rejection of claim or notice of claim, would it?

Mr. Knudsen: Well, you have me at a disadvantage now. I am not sure of the sequence. [23]

The Court: What is it? Reject of what?

Mr. Knudsen: I believe it is rejection of voucher, but I can't state for sure.

The Court: Let counsel see the exhibit.

(Whereupon Libelant's Exhibit 7 is shown to Mr. Knudsen by the Bailiff.)

Mr. Knudsen: Well, Exhibit 7, your Honor, was rejection of voucher.



(Testimony of H. E. A. Ford.)

The Court: Yes, that is what you said. Do you still believe that?

Mr. Knudsen: Yes, your Honor, and Exhibit 8 is a denial of authority over claim by the contracting officer.

The Court: The next one.

Mr. Knudsen: Exhibit 9 is advice of transfer of claim.

The Court: Advice as to transfer of claim?

Mr. Knudsen: To the general accounting office.

The Court: Transfer of claim to General Accounting.

Mr. Knudsen: Comptroller General or General Accounting Office, if the Court please.

The Court: The next one.

Mr. Knudsen: No. 10 is a recommendation regarding the claim.

The Court: From whom is that [24] recommendation?

Mr. Knudsen: They have "Accounts Office" to the General Accounting Office.

No. 11 is merely an advice regarding the status of the claim.

The Court: Merely what?

Mr. Knudsen: Advice re the status of the claim.

No. 12 is a denial of the claim.

The Court: Mr. Staring, if you have not already, will you kindly now look at each of these exhibits and see if you wish to give counsel the benefit of any attitude you may have?

(Testimony of H. E. A. Ford.)

Mr. Staring: I have looked at them, your Honor, and won't need to do so again.

The Court: Very well.

Mr. Knudsen, do you believe you are now prepared to make offer of them or do you think by reason of things you know about them you had better offer proof? You see I need to have an expression from somebody as to whether or not these matters can be gotten into evidence without further proof, something that can be appropriately said to evince that information.

Mr. Knudsen: Your Honor, I offer these exhibits in evidence.

The Court: Is there any objection to them?

Mr. Staring: If your Honor please—— [25]

The Court: State your attitude as to No. 4. Is there any objection to that?

Mr. Staring: No objection.

The Court: No. 4 is admitted.

(Libelant's Exhibit No. 4 received in evidence.)

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#### LIBELANT'S EXHIBIT NO. 4

Department of the Navy, Military Sea Transportation Service, Washington 25, D. C.

In Reply Refer to:

MSTS-314C/hrg

L4-3

Ser 15075M3

(Testimony of H. E. A. Ford.)

Western Canada Steamship Company, Ltd.  
c/o J. H. Winchester and Company, Inc.,  
19 Rector Street,  
New York 6, New York.

Gentlemen:

This will confirm notice of cancellation of the SS Lake Sicamous time charter contract MST-197 given your broker J. H. Winchester and Company, Inc., by telephone 1135 hours 13 November, 1950.

The SS Lake Sicamous will be redelivered to owner upon termination of current voyage in Seattle, Washington.

You are advised that all action incident to the redelivery of the vessel at Seattle should be coordinated with the Deputy Commander, Military Sea Transportation Service, North Pacific, Pier 37, Seattle 4, Washington who, by copy of this letter, is being requested to effect redelivery of the SS Lake Sicamous.

Sincerely yours,

R. A. CARL,  
LCDR, SC, USN, Contracting  
Officer.

Copy to: Deputy Commander, MSTs, North Pacific.

Admitted in evidence August 3, 1955.

(Testimony of H. E. A. Ford.)

The Court: No. 5, any objection to that?

Mr. Staring: I would object to No. 5 on the ground of materiality.

The Court: Then the Court will hear proof.

Any objection to No. 6?

Mr. Staring: No objection to No. 6.

The Court: Admitted.

(Libelant's Exhibit No. 6 received in evidence.)

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LIBELANT'S EXHIBIT NO. 6

[Letterhead]

J. H. Winchester & Co.

Established 1866

Steamship Agents and Brokers

19 Rector Street,

New York 6, N. Y.

January 19, 1951.

Department of the Navy,

Military Sea Transport Service (314 Code)

Main Navy Building—Room 1212

Washington 25, D. C.

Gentlemen:

Re: S.S. "Lake Sicamous"

Time Charter dated July 7/50

Contract #MST-197

(Testimony of H. E. A. Ford.)

We quote letter received from Western Canada Steamship Company, Limited. Owners of the above vessel, under date of January 17th which is self-explanatory:

“We have to advise you that, as the above named vessel is being retained on charter for about six monthths by the M. S. T. S., we desire you to give them notice that it is our intention to claim an increase in the per diem hire figure of \$1125.00 for the period in excess of 120 days due to the higher Time Charter rates paid subsequent to the expiration of the 120 day charter period, the increase to be agreed upon at a later date.”

Very truly yours,

/s/ J. H. WINCHESTER & CO.,

REB/ge

CC: Western Canada Steamship Co., Ltd.

[Stamped]: Received Jan. 22. 1951. Western Canada S.S. Co.

/s/ J. S. C.

Admitted in evidence August 3, 1955.

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The Court: No. 7, any objection to that?

Mr. Staring: No objection to 7.

The Court: Admitted.



(Testimony of H. E. A. Ford.)

(Libelant's Exhibit No. 7 received in evidence.)

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LIBELANT'S EXHIBIT NO. 7

Department of the Navy, Military Sea Transportation Service, Washington 25, D. C.

In Reply Refer to:

MSTS—314C2/ad

L6

Ser 7679M3

23 April, 1951.

Western Canada Steamship Co., Ltd.,  
1130 Marine Building,  
Vancouver, B. C., Canada.

Gentlemen:

We have reviewed your Invoice No 2-17, the Final Hire invoice for SS Lake Sicamous. It is to be noted that you charged the Military Sea Transportation Service for 75 days 13 hours at the rate of \$1,666.67 which is a rate which is not in accordance with the contract agreement.

Your Invoice is being returned herewith.

Sincerely your,

/s/ R. A. CARL,

LCDR, SC, USN, Contract-  
ing Officer,

(Testimony of H. E. A. Ford.)

Encl: Invoice No. 2-17.

[Stamped]: Received April 30, 1951, Western Canada S.S. Co.

/s/ W. S.

Admitted in evidence August 3, 1955.

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The Court: Any objection to No. 8?

Mr. Staring: No objection. [26].

The Court: Admitted.

(Libelant's Exhibit No. 8 received in evidence.)

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#### LIBELANT'S EXHIBIT NO. 8

Department of the Navy, Military Sea Transportation Service, Washington 25, D. C.

In Reply Refer to:

MSTS—341C1/wab

Ser 15098M3

2 July 1951

Air Mail—Special Delivery

Western Canada Steamship Company Limited,  
1130 Marine Building,  
Vancouver, Canada.

Attention: Mr. W. Sedgwick  
S.S. Lake Sicamous

Gentlemen:

Reference is made to your letter of May 3, 1951, in which you urged reconsideration of your claim for additional charter hire in the amount of

(Testimony of H. E. A. Ford.)

\$40,918.65 representing damages which you feel are owed to your company by the Government, presumably on the theory that the charter was breached by the Government.

As you have been previously advised, Military Sea Transportation Service is of the opinion that you have been compensated at the agreed rate of hire for the period during which the Government has had the use of your vessel in accordance with the terms of the charter party. However, since you apparently feel that you are entitled to \$40,918.65 as additional charter hire resulting from a breach of the charter, you are advised that the settling of such a claim for unliquidated damages arising out of breach of contract is not within the authority of Military Sea Transportation Service, but must be considered by the Comptroller General of the United States. In the event you decide to submit a claim for unliquidated damages to that officer, it should be addressed to the Comptroller General of the United States, General Accounting Office, Washington, D. C.

Sincerely yours,

/s/ R. A. CARL,

LCDR, SC, USN, Contract-  
ing Officer.

Encl: Invoice No. 2-17

[Stamped]: Received Western Canada SS. Co.

/s/ J. S. C.

Admitted in evidence August 3, 1955.

(Testimony of H. E. A. Ford.)

The Court: Any objection to No. 9?

Mr. Staring: I think it is immaterial, your Honor, but we will stipulate that it may be admitted.

The Court: It is admitted.

(Libelant's Exhibit No. 9 received in evidence.)

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### LIBELANT'S EXHIBIT NO. 9

General Accounting Office  
Washington 25

Claims Division

In reply please quote

Cont-Z 919026—RGZ

May 20, 1952.

Western Canada Steamship Company Limited,  
Marine Building,  
Vancouver, Canada.

Attn: J. S. Clarke, General Manager

Gentlemen:

Receipt is acknowledged of your letter dated April 28, 1952, with enclosure, relative to your claim in the sum of \$40,919.65, for additional hire for the vessel "Lake Sicamous."

Under date of January 18, 1952, in response to your letter of December 28, 1952, this Office advised you as follows:

(Testimony of H. E. A. Ford.)

“You are advised that the matter has been referred to the administrative office involved for examination and report pending receipt of which no action may be taken by this Office. When the report is received, however, further consideration will be given your claim and you will be advised as to the action taken thereon.”

This Office is still awaiting receipt of the information requested from the Department of the Navy. Immediately upon receipt of the necessary report, the matter will be accorded prompt attention.

Very truly yours,

K. L. GAYLOR,  
Chief of Section,

By /s/ C. K. ARNOLD.

Received May 26, 1952.

Admitted in evidence August 3, 1955.

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The Court: No. 10?

Mr. staring: No objection to 10.

The Court: Admitted.

(Libelant's Exhibit No. 10 received in evidence.)



(Testimony of H. E. A. Ford.)

LIBELANT'S EXHIBIT No. 10

U. S. Navy Regional Accounts Office  
1331 U Street Northwest  
Washington 25, D. C.

In Reply Refer to  
FR-10 (MK:ms)  
L6-2(MST-197)  
Voucher No. 134633

30 June, 1952.

General Accounting Office,  
Claims Division,  
Washington 25, D. C.

Subj: Claim of Western Canada Steamship Com-  
pany, Ltd., Marine Building, Vancouver,  
Canada.

Date: 28 December, 1951.

Amount: \$40,918.65.

Appropriation: 1711990.01 NMF 1951 039 19961  
Allot 30000.

Ref: (a) BuSandA Manual, par. 56205-7 (IM 21-1)  
(b) GAC ltr dtd 1-18-52, file Cont-Z-919026-  
RGZ.

Encl: (1) Above noted claim, contract MST-197.  
(2) MSTs ltr dtd 5-28-52, file MSTs-  
712/hrq (CN-28), Ser 11414M7 with three  
attachments.

(Testimony of H. E. A. Ford.)

Sirs:

The enclosed claim has been given an administrative examination and is returned to the General Accounting Office for settlement, in accordance with reference (a).

This claim is a request for payment of additional charter hire under contract MST-197, due to alleged unnecessary delay in redelivery of the S.S. Lake Sicamous to the owner. The owner contends that the vessel was time chartered to the Navy on 4 August, 1950, at a stipulated charter rate of \$1,125.00 per diem for a period of 120 days, but redelivery was not effected until 12 February, 1951, after a total of 195 days and 13 hours. The owner has submitted invoice number 2-17 for payment of the sum of \$40,918.65 which represents the difference between the charter rate of \$1,125.00 per diem as provided by contract MST-197 and the sum of \$1,666.67 alleged by the contractor to be the prevailing market rate for 75 days and 13 hours by which the charter period exceeded 120 days. Disbursing data will be furnished under separate cover. Payment of the claim has not been and will not be made by a disbursing officer of the Navy.

This office concurs in the opinion of the contracting officer that the contract does not provide for additional hire and the claimant received payment in full for the entire period of the use of his vessel. Since the claim was previously disallowed by the

(Testimony of H. E. A. Ford.)

contracting officer, favorable consideration of the claim is not recommended.

It is requested that the above-noted voucher number together with the appropriation and all accounting data shown, be transcribed to the certificate of settlement.

Respectfully,

J. A. WASSON,

Ensign (SC), USN, Director, Accounts Receivable  
and Claims Division, by Direction of the Officer  
in Charge.

[Stamped]: This claim is no longer under the jurisdiction of the Navy Department. Therefore any inquiries relative to the probable date of settlement should be addressed direct to the claims Division of the General Accounting Office, Washington 25, D. C., making reference to Navy claim voucher noted above.

Copy to:

Contr.

[Stamped]: Received July 7, 1952, Western  
Canada S.S. Co.

/s/ W. S.

Received July 7, 1952.

Admitted in evidence August 3, 1955.

(Testimony of H. E. A. Ford.)

The Court: No. 11?

Mr. Staring: No objection to 11.

The Court: Admitted.

(Libelant's Exhibit No. 11 received in evidence.)

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LIBELANT'S EXHIBIT No. 11

General Accounting Office

Washington 25

August 8, 1952.

Claims Division

In Reply Please Quote

Cont-Z 919026-RGZ

Western Canada Steamship Company, Limited,

Marine Building,

Vancouver, Canada.

Attn: Mr. J. S. Clarke, General Manager.

Gentlemen:

Reference is made to your letter of July 24, 1952, concerning your claim for \$40,918.65, representing an additional amount alleged to be due on account of unnecessary delay in redelivery of S.S. Lake Sicamous by the Department of the Navy under charter hire pursuant to contract No. MST-197.

The matter is receiving consideration in this Office and you will be informed at an early date as to the final action taken.

130      *Western Canada Steamship Co., Ltd.*

(Testimony of H. E. A. Ford.)

Very truly yours,

K. L. GAYLOR,

Chief of Section;

By /s/ C. K. ARNOLD.

Received August 13, 1952.

Admitted in evidence August 3, 1955.

[Stamped]: Received August 13, 1952, Western  
Canada S.S. Co.

/s/ W. S.

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The Court: No. 12?

Mr. Staring: No objection.

The Court: Admitted. [27]

(Libelant's Exhibit No. 12 received in evidence.)

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# LIBELANT'S EXHIBIT No. 12

Settlement Certificate  
General Accounting Office  
Washington 25, D. C.

In correspondence  
please refer to:

Division: Claims.

Claim No.: Z 919026.

Western Canada Steamship Company, Limited,  
Marine Building,  
Vancouver, Canada.



(Testimony of H. E. A. Ford.)

Gentlemen:

Your claim for \$40,918.65 representing the amount alleged to be due for unliquidated damages arising out of an alleged breach of contract because of unnecessary delay in redelivery of S.S. Lake Sicamous by the Department of the Navy in connection with a charter hire under contract No. MST-197, dated July 26, 1950, has been carefully examined and it is found that no part thereof may be allowed for the reasons hereinafter stated.

The records disclose that the subject contract provided for the charter hire of the vessel for approximately 120 days or for a period terminating with the voyage current at the end of the 120-day period. When the first voyage was completed only 65 days of the estimated charter period had been used. When voyage number two was undertaken there remained 49 days of the 120-day charter period. The record also discloses that you made no protest at that time concerning the matter even though you knew that under normal conditions the voyage would extend the time of use beyond the 120-day period; that voyage number two in fact took about 121 days or about 23 days longer than what might be construed as reasonable, although this prolonged period could not have been anticipated. However, the prolongation was caused by war conditions and exigencies of the War which the Government could not anticipate when the vessel was dispatched on voyage number two.

(Testimony of H. E. A. Ford.)

Article 29 of the contract provisions provided a method for the increasing or decreasing charter hire within the period of the contract, which consisted of filing a clearance and the submission of any supporting data; that any disagreement on a demand for a revised rate of hire that was deemed to be a disagreement as to a question of fact, could have been disposed of in accordance with Article 32 of the charter.

Accordingly, the claim for unliquidated damages arising out of an alleged breach of contract, must be denied, as it is well settled that no adjustment nor payment from appropriated funds may be made in the absence of specific provision therefor.

I therefore certify that no balance is found due you from the United States.

Respectfully,

LINDSAY C. WARREN,  
Comptroller General of the  
United States;

By /s/ W. J. McCARTHY.

[Stamped]: Received November 7, 1952, Western Canada S.S. Co.—J.S.C.

Admitted in evidence August 3, 1955.

(Testimony of H. E. A. Ford.)

The Court: Now, Mr. Knudsen, do you think by your advising with counsel you could obviate the objection to No. 5 or do you think you had better proceed with the proof?

Mr. Knudsen: May I consult with counsel?

The Court: Yes, you may. At this time we will take about a five-minute recess.

(Recess.)

Mr. Knudsen: If the Court please, counsel have stipulated that Libelant's Exhibit 5 may be admitted for the purpose of showing the authority of J. A. Winchester & Co. to give notice of claim to the contracting officer, and that they were acting in their capacity as agent for libelant in so giving notice of claim.

The Court: It is the stipulation that it may be received as proof on those questions?

Mr. Knudsen: It is so stipulated, your Honor, and for no other purpose.

The Court: As to whether there is sufficient proof to establish those facts, do you or do you not make an admission?

Mr. Staring: It was not my intention to admit that. [28]

The Court: You agree it may be admitted for the limited purpose of being evidence on those questions, is that right?

Mr. Staring: That is right.

The Court: Will you read those conditions?

(Testimony of H. E. A. Ford.)

(Whereupon, the court reporter read the statement made by Mr. Knudsen as follows: "If the Court please, counsel have stipulated that Libelant's Exhibit 5 may be admitted for the purpose of showing the authority of J. A. Winchester & Co. to give notice of claim to the contracting officer, and that they were acting in their capacity as agent for libelant in so giving notice of claim.")

The Court: With the amendment contained in Mr. Staring's answers to the Court's question, the Court does now admit Libelant's Exhibit 5 restricted, however, in its evidentiary effect to the question of the authority of Winchester & Co. in respect to the matters and things in this libel mentioned.

(Libelant's Exhibit 5 received in evidence.)

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LIBELANT'S EXHIBIT No. 5

(Copy)

January 17, 1951.

Messrs. J. H. Winchester & Co., Inc.,  
19 Rector Street,  
New York, N. Y.,  
U.S.A.

Re: S.S. "Lake Sicamous"

Time Charter dated July 7/50

Contract No. MST-197.

(Testimony of H. E. A. Ford.)

Dear Sirs:

We have to advise you that, as the above-named vessel is being retained on charter for about six months by the M.S.T.S., we desire you to give them notice that it is our intention to claim an increase in the per diem hire figure of \$1,125.00 for the period in excess of 120 days due to the higher Time Charter rates paid subsequent to the expiration of the 120-day charter period, the increase to be agreed upon at a later date.

Yours very truly,

WESTERN CANADA STEAM-  
SHIP COMPANY, LIMITED.

JOHN ROSENE,  
President.

JR:elc

Admitted in evidence August 3, 1955.

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Mr. Knudsen: Thank you, your Honor.

Mr. Bailiff, will you hand Libelant's No. 5 to the witness, please?

(Whereupon, Libelant's Exhibit No. 5 is [29]  
handed to the witness.)

Q. (By Mr. Knudsen): Mr. Ford, referring to Libelant's Exhibit No. 5, will you state what that letter is?



(Testimony of H. E. A. Ford.)

A. It is a letter written by the then president of the company to J. A. Winchester & Co. authorizing them to claim extra hire in view of the vessel being kept longer than the charter period of about 120 days.

Q. And what was the purpose of that letter?

A. The purpose of that letter was to put the contracting officer on notice.

Q. Well, specifically, what was the purpose of sending this letter to J. A. Winchester & Co.?

A. J. A. Winchester had negotiated the charter with the Anglo-Canadian, and the purpose was the same procedure to be followed, that the notice of claim for extra hire go through them rather than direct.

The Court: You are now speaking of Libelant's Exhibit 5, are you?

The Witness: Exhibit 5, yes, sir.

Q. (By Mr. Knudsen): And in so acting, was J. A. Winchester & Co. acting as the agent of Western Canada Steamship Company? A. Yes.

Q. And were they authorized so to act? [30]

A. Yes.

Mr. Knudsen: Mr. Bailiff, will you hand the witness Exhibit No. 6?

(Whereupon, Libelant's Exhibit No. 6 is handed to the witness.)

Mr. Knudsen: If the Court please, we have demanded that the Government produce the original of Libelant's Exhibit No. 6, and I believe that that

(Testimony of H. E. A. Ford.)

is available. I believe we can obviate the necessity of having two exhibits in if Mr. Staring will stipulate that the Government received Libelant's Exhibit 6.

Mr. Staring: It is so stipulated.

Mr. Knudsen: That obviates the necessity of discussing that particular exhibit.

Q. (By Mr. Knudsen): Mr. Ford, will you explain your background and qualifications in the operations of a shipping company, particularly with reference to chartering vessels?

A. Well, normally, in an integrated business where all the operations of a shipping company are carried out together—by that I mean the operating side of it and also the cargo-booking side is all carried on in the one office. There, of course, each department has its own functions. The cargo department you might term does the booking of cargoes. That may be on various bases. It may be on [31] berth terms, may be on voyage-chartered terms, may be on time charter terms.

Q. I don't wish to cut you short, Mr. Ford, but what I am interested in is your own personal experience in these matters, your background and qualifications.

A. Well, my background goes back to the inception of my career in 1919 in shipping in India for seven years, and then I went to Borneo Company, Limited, in Siam, with whom I was for sixteen years approximately.

Q. In what capacity did you act there?

(Testimony of H. E. A. Ford.)

A. About fourteen and one-half of those were served as manager of their shipping and insurance department, sometimes separately; for a period of about four years I managed both together. At that time we were agents, the company, the Borneo Company, were agents for several shipping companies of worldwide fame, and the Borneo Company also had their own line of vessels running between India and Siam, which were charter vessels which we took on time charter, mostly from Norwegian owners.

Q. Are you familiar with the charter market for vessels of the same type as the S.S. Lake Sicamous, specifically the time charter market for such vessels during the months of November and December, 1950. and January and February of 1951?

A. Well, familiar to the extent that as an [32] officer of the company any charters we make go over my desk, as an officer and secretary of the Company; also that I keep myself up to date on the position of the market by reading various technical magazines dealing with shipping; also what you might term news letters put out by certain brokers on a weekly or a monthly basis.

Q. Are these normal commercial journals circulated among the trade?      A. Yes.

Q. Would you explain what the trend of the charter market was at that time with respect to rates?

A. The trend was definitely upward with very much pressure on the market in view of the Korean hostilities.

(Testimony of H. E. A. Ford.)

Q. Was that due generally to a shortage of vessels available for chartering?

A. That is what it was turning out to be.

Q. Did Western Canada Steamship Company charter any vessels during the month of January, 1951?

A. They chartered two vessels. When I say "chartered," they took on charter two vessels.

May I interpose a question? Do you mean did we take on charter or did we charter to other people?

Q. Were you a party to any charter? Was the company a party to any type of time charter during that period?

A. We were party to two time charters. [33]

The Court: On either end of the charter agreement, is that what you mean?

Mr. Knudsen: Yes, your Honor.

Q. (By Mr. Knudsen): Now, with respect to those transactions, was the company the charterer or the owner? A. The charterer.

The Court: Well, there is chance for me to misunderstand. Did you transfer to somebody else the right to use a vessel or did somebody else transfer to you the right to use a vessel?

The Witness: Somebody else transferred to us the right to use a vessel.

Q. (By Mr. Knudsen): What type of vessels were they?

A. One I definitely looked up is a Liberty-type

(Testimony of H. E. A. Ford.)

vessel. The other I believe to be a Liberty-type vessel, also.

Q. Is that the same type as the S.S. Lake Sicamous?

A. Similar in carrying capacity and speed.

The Clerk: Libelant's Exhibit No. 13.

(Cimon charter marked Libelant's Exhibit No. 13 for identification.) [34]

The Court: I understood that previously the Court asked that all papers that counsel intended to use as a part of the libelant's case be exhibited to opposing counsel.

Mr. Knudsen: I did, your Honor.

The Court: Very well.

Mr. Knudsen: This might be denominated the Cimon charter. Counsel has never had any access to this except just a few minutes ago when he had a chance to examine it.

Mr. Staring: That is correct, your Honor. I have seen the charter, and I will wish to make an objection to its admission upon the grounds of irrelevancy and immateriality if this is the appropriate time for such an objection to be received.

The Court: To whom is that charter——

Mr. Knudsen: It is the charter of the vessel Cimon to the Western Canada Steamship Company, Limited.

The Court: The libelant?

Mr. Knudsen: Yes, your Honor.

The Court: Do you wish opposing counsel to see



(Testimony of H. E. A. Ford.)

it any further? Do you wish the witness to see it or do you wish to proceed?

Mr. Knudsen: I wish to have it identified.

The Court: Do you now offer it? [35]

Mr. Knudsen: I will as soon as I have identified it, if the Court please.

The Court: Did the witness in effect on voir dire say what you said it was?

Mr. Knudsen: He has not as yet.

The Court: Give him an opportunity to do so.

Q. (By Mr. Knudsen): Handing you what has been marked for identification as Libelant's Exhibit 13, Mr. Ford, will you identify that document?

A. Yes. This document is a charter entered into between Campania de Navigacion San Leonardo, S. A., and Western Canada Steamship Company, Limited.

Q. What was the date of the charter?

A. 10 January, 1951.

Mr. Knudsen: I offer that charter in evidence.

The Court: For what purpose do you offer it?

Mr. Knudsen: For the purpose of showing the market rate of charter hire during the month of January, 1951.

Mr. Staring: I will object to it, your Honor.

The Court: The objection is sustained.

You ought to have some witness that knows that subject somewhere.

Mr. Knudsen: If the Court please, evidence of actual charters entered into in this period is the [36] best evidence.

(Testimony of H. E. A. Ford.)

The Court: I will have to hear your authorities before ruling on it.

Mr. Knudsen: I would like to reserve the opportunity to present such authorities to the Court.

The Court: The reasons, the backgrounds, identity of covenants in the offered exhibit may be in part unlike or in whole unlike the contract in litigation.

Mr. Knudsen: If the Court please, I will offer to prove by Mr. Ford that the contents and the covenants of this time charter are substantially the same as that of the——

The Court: Was the United States a party to it?

Mr. Knudsen: No, your Honor.

The Court: The objection is sustained.

Proceed.

Q. (By Mr. Knudsen): Mr. Ford, based upon your experience in chartering vessels during the month of January, 1951, and based upon your past experience in the business of chartering and managing vessels, and based upon your knowledge of market conditions through usual and customary trade channels, do you have an opinion as to the market rate of charter hire for a vessel similar in capacity, in dead weight tonnage capacity, and speed as the S.S. Lake Sicamous? [37]

I am asking now if you have an opinion.

A. For what period, may I ask?

Q. During the month of January, 1951.

A. Not beyond what our own company chartered at that time without having to go back over the records. I couldn't say offhand, but——

(Testimony of H. E. A. Ford.)

The Court: Wait just a moment. You are not going to give an answer to what it was in the "but" clause that you are commencing to state. I ask the witness to pause until counsel can ask him another question.

Q. (By Mr. Knudsen): Mr. Ford, do you have an opinion as to that market rate of charter hire based upon your actual experience in chartering vessels during that period? A. Yes.

Q. May I ask what that is?

The Court: Wait just a moment. Don't make answer yet—not until after the question is stated in full and until after opposing——

Q. (By Mr. Knudsen): I now ask what that opinion is?

Mr. Staring: I will object to that question as irrelevant and immaterial, as not pertaining to any date or period in issue in this case, your Honor.

The Court: Well, the objection is sustained [38] on general grounds. You are going to have to prove generally that the witness has knowledge as an expert during the time mentioned in the question and it cannot be confined to his own dealings with his own ships. That is evidence, but it is not sufficient against the objections of opposing counsel.

Mr. Knudsen: If the Court please, I would like to make an offer of proof.

The Court: You may do that now.

Mr. Knudsen: I will offer to prove by this witness that libellant during the month of January, 1951, entered into two separate time charters with respect to vessels of the same type as the S.S. Lake

(Testimony of H. E. A. Ford.)

Sicamous, that is to say, they are generally American Liberty-type vessels, and that the charter rate provided for in those charters was \$35.00 per dead weight ton, which, when applied to the dead weight tonnage, that is of the Lake Sicamous, would yield a per diem charter rate of \$1,792.00 per day.

I will further offer to prove by this witness that both of those charter parties called for delivery of the vessel at a later date, in one case during the month of February, and in one case during the month of March, and that had the vessels been capable and ready for delivery during the month of January a premium of at [39] least 25c per dead weight ton could have been obtained which would mean \$5.25 per dead weight ton, which when applied to the dead weight tonnage of the S.S. Lake Sicamous would yield a per diem rate of \$1,881.00 per day.

I will further——

The Court: I think you had better wait.

I wish you to have an opportunity to state in the record your attitude, Mr. Staring and do so promptly.

Mr. Staring: Yes, your Honor. We would object to such proof inasmuch as the issues in this case concern a period which began undoubtedly on August 4, 1950, and libelant contends ran for 120 days, which would be approximately four months, or until December 4, 1950; that the market on January 10 and thereafter, the market in February or March

(Testimony of H. E. A. Ford.)

of 1951 would be quite irrelevant and immaterial and outside the issue.

The Court: The Court takes this offer and objection thereto under advisement and will permit counsel this afternoon to resume his offer, and the Court asks the witness to remain in attendance upon the Court in the course of this trial unless and until the Court otherwise orders.

You may step aside now.

(Witness excused.) [40]

(At 12:00 o'clock noon, Wednesday, August 3, 1955, proceedings recessed until 2:00 o'clock p.m., Wednesday, August 3, 1955.)

August 3, 1955—2:00 P.M.

The Court: I ask the witness to resume the stand and we will proceed.

(Witness resumed the stand.)

Mr. Knudsen: If the Court please, may the reporter read the beginning of the offer of proof?

The Court: That will be done.

(Whereupon, the court reporter read into the record the offer of proof made by Mr. Knudsen prior to the noon recess.)

Mr. Knudsen: For the record, if the Court please, I would like to complete that offer of proof by adding that each of the two separate charters referred to——



(Testimony of H. E. A. Ford.)

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(Testimony of H. E. A. Ford.)

The Court: By adding that the witness would testify?

Mr. Knudsen: That is correct, your Honor. By adding that the witness would testify that each of the two separate time charters referred to contain substantially identical—strike that—contain terms and [41] conditions substantially identical to those contained in MST 197, the charter party here involved in this case.

For the purpose of the record, if the Court please, I would like to have the second time charter referred to marked for identification so that it will appear in the record.

The Court: Let counsel see what you have just now referred to as the second time charter.

The Clerk: It will be marked Libelant's Exhibit 14.

(Nora Charter to Western Canada Steamship Co. marked Libelant's Exhibit No. 14 for identification.)

Mr. Knudsen: That may be referred to, if the Court please, as the Nora charter.

The Court: Nora charter to whom?

Mr. Knudsen: To Western Canada Steamship Company.

The Court: To the libelant, is that correct?

Mr. Knudsen: That is correct, your Honor.

The Court: And the name of the vessel identified in Libelant's Exhibit 9 is—repeating—what, please?

(Testimony of H. E. A. Ford.)

Mr. Knudsen: I believe the Court is referring to Libelant's Exhibit 13. The Cimon charter.

The Court: Is your offer of proof now completely [42] stated?

Mr. Knudsen: With the exception of having the witness simply identify this charter, if the Court please.

The Court: Do you have any objection to the offer?

Mr. Staring: I have no objection. Well, I make the same objection as was made before, your Honor, to the reception.

The Court: The Court reserves ruling on the entire offer of proof and I ask counsel to advise the Court further about the authorities relating to it before the Court finally rules upon it. I will permit, however, Mr. Knudsen to ask the usual authenticating questions to try to authenticate this Plaintiff's Exhibit 14 for admission in evidence in case the Court should hereafter rule favorably upon the offer. The questions concerning the proper authentication of Plaintiff's Exhibit 14 are subject to the same objection and ruling. The Court does not admit the evidence in the case. It permits counsel to develop by question and answer the identification that will be needed to admit this exhibit if it ever is hereafter admitted as a part of the proof offered.

Mr. Knudsen: Thank you, your Honor.

Mr. Staring: If your Honor please, the Government [43] would gladly stipulate that Exhibit 14

(Testimony of H. E. A. Ford.)

is authentic in what it purports to be, a charter dated I believe the 6th of January.

The Court: Between this witness' principal or employer, libelant in this case?

Mr. Staring: Between libelant in this case and another party whose name I don't recall.

The Court: By which exhibit libelant became the transferee of the possession and use of the vessel for the period mentioned in Exhibit 14?

Mr. Staring: It is a time charter, I believe, isn't it?

Mr. Knudsen: Yes.

Mr. Staring: Well, I should prefer to let the document speak for itself in that regard. I will stipulate that it is a time charter and that it is authentic.

The Court: Do you stipulate who was the transferee under the charter?

Mr. Staring: Yes, the Western Canada Steamship Company is the transferee.

The Court: Does that cover the matter of your authentication of this document?

Mr. Knudsen: I believe it does, your Honor.

The Court: Then is there anything else to ask the witness as a part of the direct examination [44] of the witness?

Mr. Knudsen: Yes, your Honor.

Q. (By Mr. Knudsen): Mr. Ford, with reference to the business of Western Canada Steamship Company during the month of December, 1950, and the months of January and February, 1951, will you



(Testimony of H. E. A. Ford.)

state whether or not the company was seeking vessels or seeking to charter vessels or seeking to have vessels available for charter?

A. Well, they were seeking vessels. They were seeking cargo for their own vessels, and in fact by chartering these two vessels they were in the market for vessels.

Q. Was there a plentiful supply of vessels available in the market?

A. No. The pressure was getting so great that the actual supply was getting short, and it was continuing to mount—the pressure.

Q. In a condition of short supply of vessels, when a vessel owner who has vessels time-chartered to third persons is advised that those vessels will be redelivered at a certain date, how soon does he seek to recharter those vessels to other third persons?

Mr. Staring: I will object to that, your Honor. No proper foundation has been laid.

The Court: Read the question. [45]

(Whereupon, the last question is read by the court reporter.)

The Court: The objection is sustained.

Q. (By Mr. Knudsen): Mr. Ford, I will repeat that question and ask you to confine your answer to the specific practices of Western Canada Steamship Company in that situation, the company of which you are secretary.

Mr. Staring: I will object to that on the ground that that is immaterial.

(Testimony of H. E. A. Ford.)

The Court: The objection is sustained with leave to ask a proper form of question that might relate to some aspect of the matter encompassed within that question or intended to be encompassed within that question.

Read the form of the question so counsel can observe it.

(Whereupon, the last question is read by the court reporter.)

The Court: The objection is sustained.

I had it repeated for your information to see if there is any other form of the question concerning the subject matter of this question which you wish to use.

Mr. Knudsen: Thank you, your Honor. [46]

Q. (By Mr. Knudsen): Mr. Ford, are you familiar with the business practices of Western Canada Steamship Company with reference to its offering its vessels for charter? A. Yes.

Q. With reference to the S.S. Lake Sicamous, had she been returned, redelivered, in the latter part of December, 1950, when would the company have offered the vessel for recharter?

Mr. Staring: I will object on the ground—

The Court: Objection sustained. This company might have done everything that it did different from all other companies as to which the respondent may not have had any notice or any need of any notice. This is a breach of contract, as I understand it, is that not so?

(Testimony of H. E. A. Ford.)

Mr. Knudsen: That is correct, your Honor, and I am attempting to prove damages, and I believe that under the authorities if I am able to show that there is a reasonable possibility of available employment and a reasonable possibility that the company would have availed itself of that employment——

The Court: I do not believe you have asked that in proper form. What this company did or might have done is not binding on this one. It is a question of whether or not in the market there was an available [47] market for rechartering of the vessel upon the termination of the charter party here in question and matters of that sort.

Q. (By Mr. Knudsen): Mr. Ford, was there a market available——

The Court: To your knowledge. You should ask him something like this: State, if you know—there might have been and this witness might not have known a single thing in the world about it.

Q. (By Mr. Knudsen): Mr. Ford, do you know whether there was a market available for the rechartering of the S.S. Lake Sicamous in the latter part of December, 1950, or early January, 1951?

A. In the state of the market, yes, definitely.

Q. Pardon me?

A. In the state of the market at that time, yes.

The Court: I do not think that is a responsive answer. It is stricken, and the Court will disregard it.

(Testimony of H. E. A. Ford.)

Will you read the question, Miss Reporter, and I ask the witness if he will let the Court know whether or not he can answer it after it is read.

(Whereupon, the question was read by the court reporter as follows: "Q. Mr. Ford, do you know [48] whether there was a market available for the rechartering of the S.S. Lake Sicamous in the latter part of December, 1950, or early January, 1951?")

The Court: The answer is either yes or no, one or the other.

Q. (By Mr. Knudsen): Do you know whether there was a market available?

A. To say that specifically, no, I don't know.

The Court: Ask him another question.

Mr. Knudsen: May I confer with counsel?

The Court: You may do that.

(Conference between Messrs. Knudsen and Long.)

Mr. Knudsen: If the Court please, we will terminate our direct examination of this witness at this time and offer proof by another witness.

The Court: You may cross-examine.

Mr. Staring: I have no cross-examination.

The Court: You may step down.

(Witness excused.)

The Court: Call the next witness.

Mr. Knudsen: Mr. Comyn.

The Court: I ask the witness who has just left the stand to remain in attendance upon the Court unless and until the Court otherwise directs. [49]

**JACK GERBER COMYN**

called as a witness by and on behalf of libelant, having been first duly sworn, was examined and testified as follows:

**Direct Examination**

By Mr. Knudsen:

Q. Mr. Comyn, will you please state your full name and address?      A. Jack Gerber Comyn.

The Court: Jack what?

The Witness: Gerber—G-e-r-b-e-r—Comyn—C-o-m-y-n.

Q. (By Mr. Knudsen): Where do you reside, Mr. Comyn?

A. 1108 Harvard Avenue North, Seattle.

Q. What is your occupation?

A. I am operating manager of the Girdwood Shipping Company here in Seattle.

Q. How long have you been in that position?

A. Since 1948.

Q. And what is the business of the Girdwood Shipping Company?

A. Steamship agents, charterers, freight-contractors, [50] steamship operators.

Q. What are your functions as operating manager of that company, specifically with respect to chartering vessels?



(Testimony of Jack Gerber Comyn.)

A. We are chartering vessels all the time, probably anywhere from twelve ships to forty or fifty ships a year on the charter market of the world.

Q. In connection with those chartering activities, what are your specific functions? What duties do you perform?

A. Figure out the amount of freight we can put on a ship, the amount of freight money it represents, the amount of money that we have to pay for the ship, and what eventual profit we would have left after the transaction had been completed.

Q. Do you, in the course of your duties, negotiate charters?      A. Yes.

The Court: This information is all needed as of the time of the alleged demurrage period.

Q. (By Mr. Knudsen): Mr. Comyn, were your duties as you just related during the months of November and December of 1950 and January and February of 1951?

The Court: Will you repeat that?

(Whereupon, the last question is read by the court reporter.) [51]

Mr. Knudsen: I misspoke myself.

Q. (By Mr. Knudsen): Were the duties that you have just related to me, were they your duties during those four months?

A. Yes, they were.

Q. Will you describe your experience with respect to the chartering of vessels prior to your employment with Girdwood Shipping Company?

(Testimony of Jack Gerber Comyn.)

A. Do you mean by that what I did before I joined the Girdwood Shipping Company?

Q. Yes.

The Court: So far as chartering vessels or familiarizing yourself with the vessel chartering market.

A. From 1927, when I got out of school, I was with my father.

The Court: What was his name?

The Witness: W. Leslie Comyn, and the firm was W. L. Comyn & Co.

The Court: With offices in what building in Seattle, if you know?

The Witness: In 1927 we were not here, your Honor. We were in San Francisco. We came up here in 1929, and we were in the Skinner Building here in Seattle, and then in the Colman [52] Building.

Q. (By Mr. Knudsen): What was the business of W. L. Comyn & Co.?

A. Exactly the same as the Girdwood Shipping Company business is today.

Q. And what were your duties with that company?

A. Well, I started in as a super cargo, loading vessels, checking cargo on the docks, then went into the office, booked cargo for vessels, and then eventually I took part in the operation and the chartering of ships in that firm.

The Court: Beginning in what year did you do that latter kind of work?

(Testimony of Jack Gerber Comyn.)

The Witness: From 1932 on.

The Court: Were you or were you not in that kind of work in October, 1950, and from then on until the present time?

The Witness: Yes, sir, I was in exactly that some type of business.

The Court: You may inquire.

Q. (By Mr. Knudsen): Mr. Comyn, will you tell the Court—first, let me ask you this: At all times during your employment with Girdwood Shipping Company and specifically during the months of October, November and December of 1950 and January and February of 1951, were you fully familiar with the market rate of charter hire for vessels generally, not only [53] in the United States but over the world? A. Yes, I was.

Q. Will you state to the Court what measures you did at that time take to keep in touch with that market, to keep yourself informed as to the market?

A. Well, that is done principally by cable between our office here and our London agents. I will say practically every day—not exactly—but practically every day we have a cable going to London and practically every day they have a cable coming to us, so that each morning we have been advised of what was done in the London market the day before, who took what ships and what they paid for them for the various trades in the world.

The Court: Would the trades be identified in that information, the identity of the trading route

(Testimony of Jack Gerber Comyn.)

on which the vessel was to be employed under the charter?

The Witness: Yes, sir, it would be.

Q. (By Mr. Knudsen): Were there other sources of trade information available to you and which you consulted from time to time in keeping yourself current on the market?

A. Yes. We have a teletype between our agents in New York and ourselves here, and at least two or three times a week we had teletypes going back and forth, ours telling [54] them we were in a position in the market to charter a ship maybe to carry a cargo of coal from here to Japan or a cargo from here to South Africa or Australia, and they would also advise us as to what the last fixture on a cargo of coal was to Japan or whatever we happened to be inquiring about at that time.

Q. Are there any trade journals that you subscribed to and kept current with regarding charter rates?

A. Yes. There is the "Pacific Shipper," which is fairly good. There are also New York periodicals published in New York that we obtain once a week, and there are also market reports from our agent in New York. They put one out every week which we receive on a Monday morning.

Q. And as a part of your duties did you continually refer to those materials and keep advised of the information contained in them?

A. Yes, I had to.

(Testimony of Jack Gerber Comyn.)

Mr. Knudsen: I would like to hand the witness Libelant's Exhibit 1, if the Court please.

The Court: You may do that.

(Whereupon, Libelant's Exhibit 1 is handed to the witness.)

Q. (By Mr. Knudsen): With reference to Libelant's Exhibit 1, Mr. Comyn, are you familiar with that particular time charter? [55]

A. Yes, I am familiar with the per diem charter of the Military Sea Transport.

Q. Are you familiar with the details of the S.S. Lake Sicamous as to dead-weight cargo capacity, speed, and any other features that might affect the market rate of charter hire, the rate of charter hire applicable to that vessel?

A. I am familiar with that type of vessel, and I am also familiar at the present time as to what the vessel is worth on the present charter market today.

Q. Do you have an opinion as to the market rate of charter hire applicable to the S.S. Lake Sicamous for a time charter on terms and conditions substantially equivalent to MST 197, Libelant's Exhibit 1, had she been available for chartering during the latter part of December, 1950, or early January, 1951, do you have an opinion?

A. Yes, I have an opinion.

The Court: After he asks you this question, will you pause for a moment, Mr. Comyn?

You may propound the question.



(Testimony of Jack Gerber Comyn.)

Mr. Knudsen: I am going to ask one more preliminary question, if the Court please.

Q. (By Mr. Knudsen): Do you know whether employment would have been available to the Lake Sicamous had she been available for [56] delivery in late September?

The Court: That is perhaps another phase of the same question. Answer this yes or no.

A. Yes.

Q. I will ask you what your opinion is as to whether or not employment would have been available to the S.S. Lake Sicamous on terms and conditions substantially equivalent to those contained in MST 197, Libelant's Exhibit 1, had she been available for delivery to a charterer in the latter part of December or early January, December of '50 or early January of '51?

Mr. Staring: I object on the ground he has not laid a proper foundation.

The Court: The objection is overruled.

Do you have the question before you or do you wish it read?

The Witness: I would appreciate it being read.

The Court: Let it be read.

(Whereupon, the last question is read by the court reporter.)

A. Yes, employment would have been available.

Q. (By Mr. Knudsen): At what rate could the vessel have been chartered, time chartered, under terms and conditions substantially equivalent to

(Testimony of Jack Gerber Comyn.)

MST 197 had she been available for delivery to [57] the charterer in the latter part of December, '50, or January, '51?

A. The time charter rate would have been somewhere between \$4.75 on the dead-weight and \$5.00 on the dead-weight.

The Court: Would that have been more or less than the charter rate stated in this Libelant's Exhibit 1? Look at Libelant's Exhibit 1.

The Witness: That would be more, your Honor.

The Court: By how much, if you know?

The Witness: Approximately \$600.00 to \$700.00 per diem.

The Court: Per what?

The Witness: Per day, approximately \$600.00 to \$700.00 per day.

Q. (By Mr. Knudsen): Can you convert the rate per dead-weight ton to a per diem rate?

A. Oh, yes.

Q. Will you explain how that is done?

A. Well, you take the dead-weight tonnage of the vessel which, in the case of the Lake Sicamous, is 10,750 tons. You multiply the 10,750 tons by your rate of \$5.00 per dead-weight ton per month, and it will give you a figure of approximately \$53,000.00. You would then divide that figure by 30 days, which would then give you how much per [58] day you were paying the vessel if you were paying her the \$5.00 rate on the dead-weight.

Q. Do you know what the per diem rate is that

(Testimony of Jack Gerber Comyn.)

is equivalent to \$5.00 per dead-weight ton per month?

A. Do you want me to figure it out?

Q. Well, I know you figured it out for me yesterday.

A. I would say it is \$1,792.00 a day, isn't that correct?

Q. That is correct.

The Court: Well, I do not think counsel should testify.

Mr. Knudsen: May I ask the bailiff to give this sheet of paper to Mr. Comyn to refresh his recollection?

The Court: Let counsel see it first.

(Whereupon, the sheet of paper is shown to Mr. Staring.)

The Court: Any objection to showing it to the witness?

Mr. Staring: No objection, your Honor.

(Whereupon the sheet of paper is then shown to the witness.)

A. Yes, these are my figures.

Q. (By Mr. Knudsen): Having refreshed your recollection, what is the per diem rate that is equivalent to \$5.00 per dead-weight ton [59] per month?

A. \$1,792.00 per day on the S.S. Lake Sicamous.

Q. Will you describe the condition of the charter

(Testimony of Jack Gerber Comyn.)

market during November and December of 1950 and January and February of 1951?

A. The charter market was in rather a peculiar situation where the law of supply and demand was—where the demand part was terrifically predominant as far as tonnage and space was concerned. The charter market—if an owner owned a ship—there was so much cargo to be moved in all markets that an owner was in a position where he could demand a higher rate than was paid the week or the day before, and there was such quantities of cargo to move in all directions that the freight rates and the charter market jumped in leaps and bounds between November, 1950, and January of 1951. It was a continual rise day after day during that period.

Q. I would like to ask you with reference to the specific questions I asked you regarding the Lake Sicamous as to employment available and the rate, whether your opinion would remain the same as to availability of employment and the rate if I were to specify that the ship were available for delivery in Vancouver or Puget Sound ports during the latter part of December or early part of January. In other words, I just want to bring it down to a specific delivery point. [60]

The Witness: Would you mind reading that for me?

(Whereupon, the last question is read by the court reporter.)

A. Yes.

(Testimony of Jack Gerber Comyn.)

Q. Your opinion would remain unchanged?

A. Yes.

Mr. Knudsen: Will you hand to the witness, Mr. Bailiff, the exhibits marked for identification as Libelant's Nos. 13 and 14?

(Whereupon, Libelant's Exhibits Nos. 13 and 14 for identification are handed to the witness.)

Q. (By Mr. Knudsen): Mr. Comyn, with respect to what has been marked for identification as Libelant's Exhibit No. 13, that is the Cimon charter there. Are you familiar with that type of charter form? A. Yes, I am.

Q. Will you state what type it is?

A. It is a New York——

Mr. Staring: I object, your Honor, to this line of questioning on the same grounds as before. These charters, Exhibits 13 and 14, are irrelevant and immaterial.

Mr. Knudsen: If the Court please, Mr. Comyn is an expert in the field of chartering, and I would like to [61] establish by him that these charters contain substantially the same terms and conditions as does Libelant's Exhibit No. 1.

The Court: The objection is sustained. You will have to prove the same information by means different than that, different from specific contracts, until you convince the Court that specific contracts in an Admiralty case involving a charter party are governed by a rule different from that which ordinarily governs actions on a contract.



(Testimony of Jack Gerber Comyn.)

Mr. Knudsen: If the Court please, I think this stands on the same principle as is involved where one shows contemporaneous sales of property to establish the fair market value of the property.

The Court: Men may agree for reasons peculiar to their own attitudes on a rate different or on a rate like some other specific agreement. It is a question of market.

Mr. Knudsen: The market is made up only of individual charterers.

The Court: Well, you cannot take individual contract proof unless this charter party field of the law is different from that of the ordinary contract field of the law.

Mr. Knudsen: In the event that the Court should [62] ultimately rule in this aspect in my favor, may I offer in evidence a charter which Mr. Comyn himself negotiated during January of 1950? I would like to have it marked.

The Court: Not over the objection of counsel.

Mr. Staring: Objection.

The Court: Objection sustained.

Mr. Knudsen: May I have it marked as an exhibit and identified?

The Court: You may.

Mr. Knudsen: This may be referred to briefly as the Aliakmon charter.

The Clerk: Libellant's Exhibit No. 15.

(Aliakmon charter marked Libellant's Exhibit No. 15 for Identification.)

(Testimony of Jack Gerber Comyn.)

The Court: I do not wish to take up the time of the Court in these matters. You just better get them all together and see if you cannot get from counsel a stipulation as to their identity and make the offer and let the Court rule upon it. I do not think we should hear testimony of this kind now. It will take up the Court's time to hear it. You may identify the matters so you can get them before the Court.

Mr. Staring: Your Honor, I will stipulate that [63] Exhibit No. 15 is authentic in what it purports to be.

Mr. Knudsen: Your Honor, then I will make offer of proof. I will offer to prove by the testimony of this witness that Girdwood Shipping Company in January of 1951, on January 11, 1951, negotiated the time charter of the Aliakmon, an American Liberty-type ship owned by a Greek ship owner on substantially the same terms and conditions as MST-197, the vessel being substantially the same as the S.S. Lake Sicamous as far as deadweight tonnage and speed are concerned, for a charter rate of \$5.25 per deadweight ton, which rate, when applied to the deadweight tonnage of the S.S. Lake Sicamous would yield a per diem rate of \$1881.00 per diem.

Mr. Staring: We will renew the objection, Your Honor.

The Court: That objection is sustained.

Mr. Knudsen: May I confer with counsel?

The Court: You may.

(Testimony of Jack Gerber Comyn.)

(Conference between Mr. Knudsen and Mr. Long.)

Q. (By Mr. Knudsen): Mr. Comyn, if the S.S. Lake Sicamous had been offered to you in December for charter calling for delivery in early January, could you have obtained a charter for the vessel? [64]

A. Yes, I could.

Q. And could you have obtained a charter containing substantially the same terms and provisions as are included in MST-197, Libelant's Exhibit 1?

A. Basically, yes.

Q. And at what rate could you have obtained that charter?

Mr. Staring: I object, Your Honor. This is purely speculation and conjecture as to what rate he could have obtained.

The Court: The objection is sustained. As an expert he has already testified about the market.

Mr. Knudsen: I have no further questions.

#### Cross-Examination

By Mr. Staring:

Q. Mr. Comyn, so that I will understand the operations of Girdwood Shipping Company a little better, is it correct that Girdwood Shipping Company is engaged in a ship brokerage business?

A. Yes.

Q. You stated, I believe, that you chartered from twelve to forty or fifty ships a year, was that correct?

A. Yes.

(Testimony of Jack Gerber Comyn.)

Q. And for whose accounts were they chartered? [65]

A. For the account of the Girdwood Shipping Company.

Q. When you gave those figures, were you referring to transactions in which Girdwood Shipping Company became a charterer in the sense that it was entitled to the use of the vessel?

A. Yes, sir, they became the principal.

Q. They became the principal? What use did Girdwood Shipping Company make of these vessels?

A. Principally carrying lumber cargoes to the South of Africa, to Australia, to Ceylon, to Japan, to India, and to the United Kingdom.

Q. Did Girdwood Shipping Company do any subchartering of the vessels you speak of?

A. No, they did not.

Q. Mr. Comyn, you stated in response to a question of counsel concerning the rise in charter rates in November and December, 1950, and January and February of 1951, that a rise took place of between \$4.75 and \$5.00 per deadweight ton, is that right?

A. Please repeat that again.

Q. Counsel asked you, I believe, about a rise in charter rates on vessels of the Lake Sicamous type in November and December, 1950, and January and February, 1951, and did you answer that rates in that period rose to between \$4.75 and \$5.00 per deadweight ton? [66]

A. Yes.

Q. Now, can you tell us more specifically at what

(Testimony of Jack Gerber Comyn.)

point in that period the first rise in rates took place?

A. The first rise started taking place in early November. The charter market was about \$2.15 or \$2.20 on the deadweight per ton per month in early November. By the end of November it had climbed from \$2.15 or \$2.20 clear up to \$3.00 per ton on the deadweight.

The Court: Is that the advance or the result of the advance?

Witness: No, sir. That is the advance of the market itself.

The Court: That was by what period, December, or what?

Witness: No. That is from the start of November until the end of November.

The Court: 1951?

Witness: 1950, sir.

The Court: About \$3.00 a ton you say was the amount of the advance during that month?

Witness: It advanced from about \$2.15 to \$3.00.

The Court: Well, that was about 85c.

Witness: Yes, sir, that is correct.

The Court: 85c a deadweight ton?

Witness: Yes, sir. [67]

The Court: You may proceed.

Q. (By Mr. Staring): Mr. Comyn, then do I understand you correctly that at the end of November it stood about \$3.00 per deadweight ton?

A. Yes.

Q. Now, what would it have been on the 4th of December?



(Testimony of Jack Gerber Comyn.)

The Court: What year?

Q. In 1950.

A. Approximately \$3.00 to \$3.25.

The Court: To what date in December?

Mr. Staring: That was December 4, Your Honor.

Q. (By Mr. Staring): Mr. Comyn, does Girdwood Shipping Company always pay the same rate as Military Sea Transportation Service on comparable charters? A. No, sir.

Q. Does it always pay the same rate as other charterers? A. Yes.

Q. Comparably? Is that rate affected by the location of the vessel? A. Yes.

Q. Location of the charterer—of the cargo?

A. Yes, but not of the charterer. [68]

Q. Is it affected by the type of cargoes carried?

A. Yes.

Q. Mr. Comyn, do you know whether the increase in rates in November and December, 1950, which you have testified to was well known in the shipping industry?

A. Yes, it was. It is common knowledge.

Q. Would you say it was a business fact known to every major shipping company? A. Yes.

Mr. Staring: May I confer with counsel?

The Court: You may.

(Conference between Mr. Staring and Mr. Cushman.)

Mr. Staring: I have no further questions, Your Honor.

(Testimony of Jack Gerber Comyn.)

The Court: Anything on redirect?

Mr. Knudsen: Yes, Your Honor.

### Redirect Examination

By Mr. Knudsen:

Q. Counsel asked you on cross-examination, Mr. Comyn, to develop the increase of rates to the end of November and then state the rate on December 4th. Will you continue with that and trace the development of the rates specifically to the end of December and then in the early part of January and [69] the early part—I mean then the latter part of January and the early part of February and the latter part of February? A. Yes.

The Court: Will you let me have, if you can, that information in the form of the margin of advance, and do not speak of the over-all market but the amount of the advance in the rate.

Witness: All right, Your Honor.

A. We will proceed from December 4 when, if I remember correctly, I said that the rate was somewhere between \$3.00 and \$3.25 per deadweight ton.

The Court: By December 4?

Witness: Yes.

The Court: How much was the advance from the 85c advance in November to the 4th day of December?

Witness: From no advance to 25c advance, Your Honor.

The Court: Pardon?

(Testimony of Jack Gerber Comyn.)

Witness: From no advance to 25c.

The Court: I said November. I understood you on cross-examination to say that from November 1 to the end of November the margin of the advance of the rate per deadweight ton was 85c.

Witness: That is right, Your Honor. That is what I said. [70]

The Court: Now, what was the margin of the advance from that date, the end of November, until the 4th day of December of 1950?

Witness: 25c a deadweight ton, Your Honor.

The Court: And how much from the 4th, in terms of advance, was experienced within the time specified by Mr. Knudsen in his question? Do you have it?

Witness: Yes. I will get it for you in a second.

From the 4th of December until the end of December the rate had advanced 75c per deadweight ton per month.

The Court: Ask him another question.

Q. (By Mr. Knudsen): That advance then is the difference between \$3.25 and what figure?

A. \$4.00—between December 4 and December 31.

Witness: I believe that is what you requested, Your Honor.

The Court: Well, I didn't request the \$4.00; counsel did. I requested the amount of margin.

Witness: Well, that was the margin, 75c.

Q. (By Mr. Knudsen): Now, what further advance occurred in the first ten days of Janu-

(Testimony of Jack Gerber Comyn.)

ary? [71] A. It approximated another \$1.00.

Q. That is from what amount to what amount?

A. It went from \$4.00 to approximately \$5.00 in a very short period of time there.

Q. That was in the first ten days of January?

A. Yes.

Q. Then what was the rate by the end of January? What was the further advance by the end of January?

Mr. Staring: If Your Honor please, I will object to counsel concerning himself now with a period which is irrelevant and immaterial to this case.

The Court: The Court is going to overrule this objection because it shows the market trend for a reasonable amount of time after the particular date during which he claims damages.

Mr. Knudsen: You may answer the question.

Witness: Will you repeat it, please?

Q. (By Mr. Knudsen): What further advance occurred between approximately the 10th of January and January 31st?

A. Another 50c per ton on the deadweight.

The Court: That is as to the end of January? That means that after the first ten-day period in that month there was another increase of how much?

Witness: 50c. [72]

The Court: You may inquire.

Q. (By Mr. Knudsen): And that was from what rate to what rate?

A. From \$5.00 to \$5.50.

(Testimony of Jack Gerber Comyn.)

Q. And what further advance occurred during the first twelve days of February?

A. Another 50c.

The Court: The first twelve days, did you say?

Mr. Knudsen: Yes, Your Honor.

The Court: All right. Anything else?

Q. (By Mr. Knudsen): Did the market generally advance further after that?

A. Yes, it did for a short while.

Mr. Knudsen: That is all.

The Court: Any recross-examination?

Mr. Staring: No further questions.

The Court: You may step down.

(Witness excused.)

The Court: You may call the next witness.

Mr. Knudsen: If the Court please, I would at this time—Your Honor, may Mr. Comyn be excused to return to his office?

The Court: Any objection?

Mr. Staring: No objection.

The Court: Mr. Comyn is excused and may go on [73] about his business if that is his wish.

Mr. Knudsen: If the Court please, I would like to move that the deposition of Capt. Robert Craig——

The Court: All depositions in this case now in the Clerk's hands remaining unpublished are now published and all members of the public and counsel and others may have access to them.

Mr. Knudsen: I would like to commence the



reading of this deposition of Capt. Craig if the Court please.

The Court: You may do that. Skip the formal parts, will you, and begin—This deposition is on unnumbered lines, which makes it a little difficult. Begin where you ask the first question, Mr. Knudsen, will you?

Mr. Knudsen: Thank you, Your Honor. May Mr. Long take the stand as a witness?

The Court: Yes. If he is willing to read the answers I wish he would take the stand and let us proceed.

(Whereupon, the reading of the deposition of Robert Craig was commenced with Mr. Knudsen reading the questions and Mr. Long reading the answers as follows:)

## DEPOSITION OF ROBERT CRAIG

### “ROBERT CRAIG

“a witness called by the Libelant, being of [74] lawful age, and being first duly sworn in the above cause, testified on his oath as follows:

### “Direct Examination

“By Mr. Knudsen:

“Q. Captain, will you state your full name?

“A. Robert Craig.

“Q. Where do you reside, sir?

“A. 17132 Burnham Avenue, Lansing, Illinois.

“Q. Is that your permanent residence?

“A. It is.

(Deposition of Robert Craig.)

“Q. Where are you employed?

“A. Wilcox & Follett Company, 1255 South Wabash Avenue, Chicago.”

The Court: This is a long deposition. Let us go through the reading at a more rapid pace.

Mr. Long: Very well, Your Honor.

“Q. And that is your permanent employment, I take it? A. It is, yes, sir.”

The Court: Just pass that and go on. We will be here tomorrow if you read every such thing as that in this deposition.

Mr. Knudsen: Fine, Your Honor. I will skip down over the next several lines then to the next question of the witness regarding this case. [75]

“Q. Captain, as I understand it, you were the Master of the Lake Sicamous, the S.S. Lake Sicamous, during July, 1950, and continuously after that date through the month of February, 1951, is that correct? A. I was.

“Q. And as such you were employed by Western Canada Steamship Company, Limited, the Libelant in this case? A. I was, yes.

“Q. Are you now employed by that company?

“A. No, sir.

“Q. Do you have any connection or affiliation with that company? A. None at all.

“Q. Are you a citizen of the United States?

“A. No, not yet.

“Q. Do you intend to become a citizen of the United States? A. I do.

(Deposition of Robert Craig.)

“Q. Until you do become a citizen of the United States, what is your citizenship?

“A. British, British National.

“Q. I understand you were born in Glasgow.

“A. I was, yes.

“Q. And you came to Canada in 1948?

“A. 1948. [76]

“Q. And when did you move from Canada to Lansing, Illinois? A. In May of 1952.

“Q. Captain, when did you commence going to sea?

“A. June of 1927 I went to sea first of all.

“Q. In what capacity? A. As a cadet.

“Q. Did you thereafter become an officer in the British Merchant Marine?

“A. I did, yes. I got my Second Mate's certificate in October, 1931, and then afterwards was Quartermaster.

“Q. You served as Quartermaster?

“A. I served as Quartermaster after that; and in 1933 I left the sea through illness, and returned to sea again in June of 1940.

“Q. In what capacity?

“A. As Third Officer with the Anchor Line Steamship Company of Glasgow.

“Q. How long did you serve as Third Officer with the Anchor Line?

“A. I was Third Officer from June of 1940.

“Q. You commenced your experience as Third Officer about June, 1940? A. Yes.

“Q. Captain, do you have with you your Certifi-

(Deposition of Robert Craig.)

cate of [77] Discharge issued by the British government?      A. I have.

“Q. And does that contain a record of your service in the Merchant Marine?      A. It does.

“Q. And are you referring to that now when you give your experience at sea?      A. I am.

“Q. How long did you serve as Third Officer for the Anchor Line?

“A. From June, 1940, until February of 1942 as Third Officer.

“Q. What type of ships were you sailing on?

“A. On cargo ships of around about 8,000 tons, gross tonnage.”

Mr. Knudsen: Skipping the objection, if the Court please, to my next question on page 7——

“Q. As I understand it, Captain, you received your First Mate's certificate in July of 1942?

“A. Yes, I did.

“Q. And you served as a Second Officer for the Line, the Anchor Line, from July of 1942 until July of 1943?      A. I did, yes.

“Q. That service was aboard a troopship of approximately 12,500 tons gross? [78]

“A. Yes, the California.

“Q. You served as Second Officer for the Anchor Line thereafter from October of 1943 until January of 1945, which service was aboard freighters of approximately 8,000 tons gross?

“A. Yes.

“Q. Your service for the Anchor Line was worldwide?      A. Yes.

(Deposition of Robert Craig.)

“Q. You received your Master’s Certificate in May of 1945 which is British Certificate No. 53488 and entitles you to sail all oceans and any tonnage?

“A. That is correct.

“Q. You served as a First Mate for the Currie Line operating out of Leith, Scotland, from May, 1945, until December, 1947. This was service involving the Mediterranean and Baltic on freighters of approximately 1,000 tons gross?

“A. That is correct.

“Q. Thereafter, Captain, is it true that you served for the Western Canada Steamship Company, Limited, operating out of Vancouver, British Columbia, Canada, as First Mate from April of 1948 to June of 1950 aboard various vessels, primarily Canadian Liberties of between 7,000 to 8,000 tons gross?

A. That is correct.

“Q. In June of 1950 you became Master of the S.S. Lake [79] Sicamous?

A. I did, yes.

“Q. Owned by the Western Canada Steamship Company, Limited, and served in that capacity until February, 1952?

A. I did that.

“Q. And your service for Western Canada was worldwide?

A. It was.

“Q. Captain, when did you first learn of the charter of the vessel to the United States, the charter involved in this action?

“A. Well, I was on a voyage from Japan back to Vancouver when I received instructions, about four days off the west coast, to proceed to Seattle, to load for the United States Government.”



(Deposition of Robert Craig.)

Mr. Knudsen: Now, if the Court please, I will ask that the log books now be marked for identification. That is the first one.

The Court: Why don't you make copies of the log books and have them brought here and let counsel look at the original log book and compare it with the copy and see if the copy could be used? You ought never needlessly clutter up the Court's files with parts of books in large dimensions, objects that cannot be neatly filed, unless, because the original document is the only thing you can get [80] in evidence, you have to use the original document.

Mr. Knudsen: Our reason for using the books themselves, your Honor, was that our references to these logs are so detailed and cover so many pages that it seemed it would be confusing.

The Court: All right. The time might come when the ship operator would wish to keep the official log in his file for reasons other than this lawsuit, and it is too bad that he cannot, but have that in mind in the future. When you can possibly shorten or make things more convenient in that way, arrange to do it.

The Clerk: Libelant's Exhibits 16, 17 and 18.

(Log book marked Libelant's Exhibit No. 16 for identification.)

(Log book marked Libelant's Exhibit No. 17 for identification.)

(Log book marked Libelant's Exhibit No. 18 for identification.)

**(Deposition of Robert Craig.)**

Mr. Knudsen: If there is no objection, your Honor, I will transpose the references in the deposition to the present markings.

The Court: If that is desired, the Court approves of it. The exhibits are what? [81]

The Clerk: Exhibits 16, 17 and 18.

The Court: Log books, are they?

The Clerk: Yes, your Honor.

Mr. Knudsen: (Reading.)

“Q. Captain, I will hand you what is marked as Libelant’s Exhibit 16 for identification and ask you if you can identify it?

“This is the log of the S.S. Lake Sicamous, of which I was Master at the time that this log covers.

“Q. Now, which log is that; that is to say, the rough log or the deck log?

“A. This is the deck log.

“Q. What dates does that cover?

“A. The first entry in the log was made on July 25, 1950, until October 21, 1950, at 2400.

“Q. Who made the actual entries in the log?

“A. The officers in charge of the deck at the time.

“Q. And were they under your supervision?

“A. They were.

“Q. And you recognize their signatures and initials where they appear? A. I do.

“Q. You identify this as the original deck log?

“A. I do, yes.

“Q. Handing you what has been marked as Li-

(Deposition of Robert Craig.)

belant's [82] Exhibit No. 17, will you identify that in the same manner?

"A. This is the log of S.S. Lake Sicamous, of which I was Master, covering the period from October 22, 1950, until January 25, 1951.

"Q. And you identify that as the original deck log of the vessel?

"A. That is the original deck log, yes.

"Q. Handing you Libelant's Exhibit 18 for identification, will you identify that in the same manner?

"A. This is the log of the Lake Sicamous of which I was Master covering the period from January 26, 1951, until February 20, 1951.

"Q. And this also is the original deck log of the vessel?           A. Yes, sir.

"Q. And all the entries in this log were made by your officers under your supervision?

"A. They were, yes, sir.

"Q. And you recognize their initials and signatures where they appear?           A. I do, yes, sir."

Mr. Knudsen: If the Court please, I offer these logs in evidence.

Mr. Staring: No objection.

The Court: Each of them is admitted. [83]

(Libelant's Exhibits Nos. 16, 17 and 18 received in evidence.)

Mr. Knudsen: Now, skipping over to page 12. in the middle of the page—— (Reading.)

"Q. Captain, I hope you will feel free to refresh

(Deposition of Robert Craig.)

your recollection by reference to the log wherever you feel it is necessary.

“Directing your attention to the first voyage under the charter, M.S.T. 197, I would like to call to your attention that it is admitted in the pleadings that the vessel was delivered to the United States on August 4, 1950, at the hour of 1200 Pacific Daylight Savings Time, at Seattle, Washington.

“Were you given any instructions by the United States with respect to the first voyage under the charter?

“Mr. Ferguson: At what time?

“Q. At or about the time of delivery.

“Mr. Ferguson: That is, August 4, you mean? At or about August 4, 1950.

“Mr. Knudsen: Yes.

“The Witness: Well, my instructions were to proceed to Mukilteo, Washington, after the ship was prepared for loading ammunition, and load a full cargo of ammunition—bombs in this case.”

The Court: I don't care about all that. Skip [84] all that.

Mr. Knudsen (Reading):

“Q. Incidentally, Captain, what hour Greenwich Mean Time is 1200 Pacific Daylight Savings Time?

“A. Pacific Standard Time?

“Q. At Seattle?

“A. At Seattle. Pacific Standard Time is eight hours behind Greenwich Mean Time.

“Q. How about Daylight Savings; is that seven hours? A. Seven hours, yes.

(Deposition of Robert Craig.)

“Q. So it would be 1900 G.M.T.

“A. That is right.

“Q. Where did you have the vessel lined for cargo?       A. At Tacoma, Washington.

“Q. And at what time was the lining completed?

“A. The lining was completed on August 9 at 0400.

“Q. And when did you commence loading at Mukilteo?

“Mr. Ferguson: Let it be noted that the Captain is referring to the log book.

“The Witness: The log book, yes.

“A. On the 11th of August, 1950, at 0900 she commenced loading.

“Q. And when was loading completed, according to the log?

“A. On August 25 loading was completed at [85] 1730.

“Q. According to my calculations, Captain, that is an elapsed time for loading of 14 days, 8 hours and 30 minutes, is that correct?

“A. I believe so.

“Q. How did the loading progress with respect to the number of hours worked each day?

“A. On the whole, they worked about 20 hours a day, 20 to 24 hours a day.

“Q. How did the loading progress with respect to working on Saturdays and Sundays?

“A. The first Sunday they worked until 5:00 o'clock in the morning and didn't work any more



(Deposition of Robert Craig.)

that day, and resumed at 8:00 o'clock on Monday morning.

“Q. How about Saturday, the day before?

“A. Saturday, they worked all day that Saturday.

“Q. When you say ‘all day’ how many hours a day do you mean?

“A. They worked all that Friday night until 1900 on Saturday—I beg your pardon—they worked right through Saturday.

“Q. Until when? A. 2400. The full day.

“Q. Now, on Saturday, August 19th, Captain?

“A. They worked all day on Saturday, and they worked right through Sunday also. [86]

“Q. You said that loading was completed on August 25th at 1730. When did the vessel sail?

“A. We sailed at 1819, when we let go.

“Q. On that same day?

“A. On that same day, yes.

“Q. Captain, did you receive written instructions from the United States with respect to the voyage? A. Yes.

“Q. What were those instructions?”

Mr. Knudsen: I think we can skip over that, Mr. Long, to page 17.

The Court: The first question on the third line, Mr. Knudsen.

Mr. Knudsen: (Reading.)

“Q. Did you send copies to the owners?

“A. No, I didn’t send any copies to the owners.

(Deposition of Robert Craig.)

“Q. All written instructions that you received you turned over to M.S.T.S. at destination?

“A. Yes, sir.

“Q. Now, what were those instructions?

“A. Those instructions on the first voyage were to proceed to Okinawa and there discharge the cargo.

“Q. And did you do so?           A. I did.

“Q. When did you arrive at Okinawa? [87]

“I direct your attention, Captain, to approximately September 16th or 17th.

“A. We arrived in Buckner Bay, Okinawa, on September 17th.

“Q. At what hour?

“A. Well, we were all fast at 0745.

“Q. When did discharge commence at Buckner Bay?           A. Discharge commenced at 0920.

“Q. That same day?           A. That same day.

“Q. When was discharge completed?

“I direct your attention, Captain, to September 27th.

“A. Completed discharge on September 27th at 0100.

“Q. According to my calculations, Captain, that is an elapsed time for discharge of 9 days, 15 hours and 40 minutes, is that correct?

“A. I believe so.

“Q. How did the discharge progress, Captain, with respect to hours worked during the day?

“A. They worked throughout the day.

“Q. When you say ‘throughout the day,’ how many hours a day do you mean?

(Deposition of Robert Craig.)

“A. 24 hours a day except for meals.

“Q. How did the loading progress with respect to work [88] on Saturdays and Sundays?

“A. They worked on Saturdays and Sundays.

“Q. They worked a 7-day week? A. Yes.

“Q. When did the vessel depart from Okinawa?

“A. The vessel left Okinawa on September 27th at 0430—1327, my mistake.

“Mr. Ferguson: May I ask you if that is the rough or the smooth log?

“The Witness: This is the rough log, the original entries.

“Q. Captain, when you are referring to specific dates and hours here, are you taking those from the log? A. I am, yes.

“Mr. Ferguson: In other words, you can't remember those dates specifically now?

“The Witness: No.

“Mr. Ferguson: And it is necessary to refresh your memory?

“The Witness: Yes.

“Mr. Ferguson: By using the log.

“The Witness: Yes.

“Q. Where were you bound when you departed from Okinawa?

“A. We were bound back to Seattle. [89]

“Q. When did you arrive, Captain, referring you to October 13th in the log?

“A. We arrived at 2136.

“Mr. Ferguson: What day?

(Deposition of Robert Craig.)

“The Witness: That is on October 13th, 1950, at 2136.

“Q. Pacific Standard Time?

“A. Pacific Standard Time.

“Q. What time is that G.M.T. in Seattle?

“A. It is plus eight hours; would be October 14, at 0536 G.M.T.

“Q. Was that the conclusion of voyage No. 1, under the charter? A. It was, yes.

“Q. According to my figures, Captain, that is an elapsed time for the first voyage of 70 days, 10 hours, 36 minutes—that is from the time of delivery to the end of the first voyage, is that correct?

“A. I believe so.

“Q. Before I go on, Captain, let me ask you one or two more questions regarding——”

Mr. Knudsen: Well, I won't ask those if the Court please.

I would like to start on the third question on page 21. (Reading.) [90]

“Q. Captain, when you say that these logs are accurate with respect to times when they record that certain events happened, such as ship breaking ground, at an odd number of minutes, is that accurate? A. Yes, sir.

“Q. Was that entry made at the time?

“A. That entry was made at the time, yes.

“Q. Now, Captain, directing your attention to the second voyage, did you receive instructions from the United States concerning the second voyage

(Deposition of Robert Craig.)

after you had returned to Seattle from the first voyage?      A. Yes.

“Q. What were those instructions, generally, first.”

Mr. Knudsen: At the top of page 22, Mr. Long.

Mr. Long: You are skipping the bottom of the page?

Mr. Knudsen: Yes.

“A. After refueling we proceeded to Tacoma, and the wood lining was repaired and the ship made ready for taking aboard another cargo of ammunition.

“Q. When did the second voyage commence?

“A. The second voyage commenced on October 13, 2136.

“Q. Pacific Standard Time?

“A. Pacific Standard Time.

“Q. Captain, at what time was the vessel refueled, [91] the lining repaired, and the vessel ready to load?

“A. 1645 the lining was repaired and the vessel was ready to load.

“Q. On what date?

“A. That was on October 15th.

“Q. At 1645?      A. At 1645.

“Q. And when and where did you commence loading?

“A. We commenced loading at Bangor, Washington.

“Q. Bangor?



(Deposition of Robert Craig.)

“A. Bangor, at the Naval Ordnance Dock there. We commenced loading at 1815 on October 17th.

“Q. What were you doing during the interim between October 15th and 1645 and October 17 at 1815?

“A. We were waiting for a berth in Bangor, Washington.

“Q. Who arranged for the berth under the charter?

“A. The M.S.T.S. arranged that; Military Sea Transportation Service.

“Q. Captain, are you familiar with the custom in west coast ports regarding the loading of vessels, first with respect to the number of hours customarily worked during a day; and, second, with respect to the working on week ends?”

Mr. Staring: I will object to that question on the grounds no proper foundation has been laid. [92] It is not shown that——

Mr. Knudsen (Reading):

“Q. I will ask you, Captain, if you are familiar with the custom in west coast ports that I referred to? A. I am, yes.”

Mr. Staring: I renew my objection.

The Court: The objection is overruled.

Mr. Knudsen: (Reading.)

“Q. What is that custom, first, with respect to the number of hours worked during the day?

“A. Well, it is the custom on the west coast to work a full——”

The Court: This objection is overruled.

Mr. Knudsen: (Reading.)

(Deposition of Robert Craig.)

“Q. You may answer, Captain.

“A. It is the custom on the west coast to——

“Mr. Ferguson: Now, by ‘west coast’ you mean Canada or the United States?

“The Witness: That is the west coast, which includes Canada and right down the west coast.

“Q. Canada and the United States.

“A. And the United States, yes. It is the custom there to have continuous loading.

“Q. 24 hours a day?

“A. 24 hours a day. [93]

“Q. Is that true with respect to general cargo and bulk cargo? A. It is, yes.

“Q. What is the custom with respect to a 7-day week? A. Well, they work week ends also.

“Q. And that is true with respect to both grain cargoes and general cargoes?

“A. It is true, yes.

“Q. Was this custom followed by the United States in loading the vessel at Bangor, Washington?

“A. No. We didn’t work week ends.

“Q. When did loading commence, Captain?

“A. Loading commenced on October 17th at 1815.

“Q. And how long did they load on that day?

“A. They loaded on that day from 1815 until midnight.

“Q. And on October 18th?

“A. And on the 18th they loaded right through the 24 hours except for meal hours.

“Q. And on the 19th?

(Deposition of Robert Craig.)

“A. On the 19th they loaded through the 24 hours except for meal hours.

“Q. And on the 20th.

“A. On the 20th, the full 24 hours except for meal intervals.

“Q. And on the 21st. [94]

“A. On the 21st, they loaded until 0730 when they ceased loading for the day.

“Q. No cargo was loaded from 0730 until 2400 on that day, is that correct?

“A. Yes, that is right.

“Q. On the 22nd.

“A. On the 22nd, which was Sunday, there was no work done at all.

“Q. And on Monday, the 23rd.

“A. Monday, the 23rd, they commenced loading at 0730 and worked right up until midnight.

“Q. And on the 24th.

“A. On the 24th they commenced loading at 0730 and worked until 1700.

“Q. And they did not work from 1700 until 2400? A. They did not.

“Q. On the 25th.

“A. On the 25th they commenced work at 0730 and ceased at 2400.

“Q. And on the 26th.

“A. On the 26th they commenced at 0730 and ceased work at 2400.

“Q. Excuse me, Captain. Was Thursday the 26th? A. Thursday, the 26th.

(Deposition of Robert Craig.)

“Q. Now, will you refer to the log very closely for [95] that day, please?

“A. The entries read:

“ ‘0730, 5 gangs resumed loading. 1050 ceased work for meals. 1130 resumed loading. 1245 ceased loading.’ Then: ‘1630, one gang aboard to load No. 2 lower hold.’

“Q. Was any loading going on then from 1245 until 1630? A. No, none at all.

“Q. Does the log state why?

“A. The log does not state, within those hours, any reason.

“Q. And 1 gang came aboard to load No. 2 at 1900, is that correct?

“A. That is right—at 1630.

“Q. At 1630. Now, will you read the rest of the entries for that day?

“A. And at 1900 there was one gang loading No. 4 lower hold.

“Q. Until what hour? A. Until 2400.

“Q. At which time what happened?

“A. At which time the work ceased and the hatches were covered.

“Q. And what was done on the 27th, Captain?

“A. On the 27th they commenced loading again at 0730, [96] and they worked until 2400 when the hatches were covered.

“Q. On the 28th.

“A. On the 28th, which was Saturday, there was no loading done at all.

“Q. On the 29th.

(Deposition of Robert Craig.)

“A. On the 29th, which was Sunday, there was no loading done.

“Q. And on the 30th.

“A. On the 30th they came aboard, commenced loading at 0730, and they ceased loading for the day at 1550.

“Q. On the 31st.

“A. On the 31st they commenced loading at 0730 and ceased loading for the day at 1600.

“Q. And on November 1st.

“A. On November 1st they commenced loading at 0730 and ceased loading at 1600.

“Q. And on November 2nd.

“A. November 2nd, commenced loading at 0730 and ceased loading at 1600.

“Q. On November 3rd.

“A. On November 3rd they commenced loading at 0730 and ceased loading at 1600.

“Q. Excuse me, Captain. Will you read the entries on November 3rd in detail?

“A. (Reading): ‘0600 riggers aboard to uncover hatches [97] 0730, 5 gangs resumed loading. 1045 ceased work for meal. 1125 resumed loading. 1245 ceased loading awaiting cars. 1415 resumed loading, cars arrived.’

“Q. What cars does that refer to, Captain, do you know?

“A. The cars bringing the ammunition to the ship.

“Q. Was that railroad cars?

“A. Yes. And ‘1600 ceased work for the day.’



(Deposition of Robert Craig.)

“Q. November 4th.

“A. November 4th, Saturday, no work this day.

“Q. November 5.

“A. November 5, Sunday, no work that day.

“Q. November 6th.

“A. November 6th, 0730 commenced loading; and 1600 ceased loading for the day.

“Q. The 17th.

“A. November 7, 0730 commenced loading; and 1600 they ceased work for that day.

“Q. And the 8th.

“A. On the 8th, 0730, commenced loading, and 1600 ceased work for the day.

“Q. And on the 9th.

“A. On the 9th, 0730 commenced loading, and 1600 ceased work for the day.

“Q. And on the 10th, sir. [98]

“A. On the 10th, commenced loading 0730, and completed loading at 1130.

“Q. That was Friday, November 10th, was it not, Captain? A. Friday, November 10th.

“Q. And at what time did the vessel sail?

“A. The vessel sailed at 1340.

“Q. On that same day?

“A. On that same day.

“Q. Captain, have you, prior to this deposition, reviewed the log with me and computed the number of days that it took to load this vessel at Bangor?

“A. Yes, I have.

“Q. Do you recall that number of days offhand?

“A. No.

(Deposition of Robert Craig.)

“Q. Might I ask you, Captain, if you will start then at 1815 in the log on October 17 and count the days?”

Mr. Staring: Skip that.

Mr. Knudsen: (Reading.)

“Q. Is it true, Captain, that the loading took place on portions of 25 consecutive days?

“A. Yes, according to our computation.

“Q. During that time, Captain, is it also true that no cargo was worked a total of 13 days, 21 hours, and 45 minutes? [99]

“A. That is correct.

“Q. Based upon your experience as an officer and Master of ocean-going vessels, Captain, was that vessel loaded within a reasonable time at Bangor, Washington, having in mind the cargo loaded, and the amounts thereof?”

Mr. Staring: At this moment I am going to——

The Court: The objection is overruled.

Mr. Long: The answer to that question is: “I don’t think so.”

Mr. Knudsen: (Reading.)

“Q. Captain, based on your experience, do you have an opinion as to what would be a reasonable time to load that cargo aboard that vessel? First, do you have an opinion? A. I have, yes.

“Q. What is that opinion?”

The Court: That objection is overruled, also. The Court has considered it.

Mr. Knudsen: (Reading.)

(Deposition of Robert Craig.)

“Q. Captain, what cargo was loaded at Bangor, Washington? A. Ammunition.

“Q. What facilities were available for loading at Bangor?

“A. All the ship's equipment was available for loading cargo, all the ship's derricks and [100] winches.

“Q. Was the vessel in berth?

“A. She was, yes.

“Q. Who brought the cargo alongside?

“A. Longshoremen.

“Q. Who hired the longshoremen?

“A. Military Sea Transportation Service, according to what I know.

“Q. Were they civilian longshoremen?

“A. They were, yes.

“Q. How was the ammunition brought alongside; that is, by what form of transportation?

“A. It was taken out of railway cars and longshoremen handled it on these little trucks, brought them to shipside, and they were hoisted on board by the ship's derricks.

“Q. Captain, using the facilities that were actually used, if cargo had been brought alongside 24 hours a day, 7 days a week, how long would it have taken to load that vessel, in your opinion?”

Mr. Staring: Same objection.

The Court: Overruled.

Mr. Long: (Reading.)

“A. In my opinion, 12 days would be a reasonable time for loading that cargo.

(Deposition of Robert Craig.)

“Q. When did the vessel break ground departing from Bangor? [101]

“A. On November 10, 1950, at 1340.

“Q. Prior to breaking ground did you receive written instructions, sailing instructions, from the United States? A. I did.

“Q. What were those instructions?

“A. Those instructions were to proceed to Yokohama and there discharge the cargo.

“Q. Is that Yokohama, Japan?

“A. Yokohama, Japan.

“Q. Did those instructions specify the course?

“A. I received instructions, routing instructions from what I understand to be the Naval Control Service Officer, I believe, of the Port of Embarkation, Seattle, Washington.

“Q. Captain, what is the customary route from Seattle or Bangor, Washington, to Yokohama, Japan?

“A. The usual route is a composite great circle from Seattle, Washington, to Yokohama, Japan.

“Q. What is the most expeditious route from Seattle or Bangor, Washington, to Yokohama, Japan?

“A. The most expeditious route is that composite great circle.

“Q. Would you briefly describe what that composite great circle route is?

“A. On leaving Seattle a great circle is plotted to a point approximately 50 to 100 miles south of the Aleutians. [102] and then we sail west until we

(Deposition of Robert Craig.)

arrive at another point from which we make another great circle departure in the direction of Yokohama.

“Q. You say that you sail west. Do you sail south of the Aleutians?

“A. We sail south of the Aleutians, yes.

“Q. That is the Mercator Course?

“A. Yes.

“Q. And then when you get beyond the Aleutians you pick up a great circle to Yokohama?

“A. We do, yes.

“Q. Was the route prescribed for this second voyage by the United States, that route?

“A. It was not.

“Q. What route was prescribed?”

Mr. Knudsen: Then we will skip over to the bottom of the next page. Do you object to my asking if it is more southerly?

Mr. Staring: I think I would like this in, if your Honor please.

Mr. Knudsen: All right.

Mr. Staring: (Reading.)

“Just a minute, I will object to it on the ground that it may still be restricted, the routes taken on these voyages. As to the exact route I [103] will call upon the Captain not to give that route.

Mr. Knudsen (Reading): “Generally speaking. I don’t want your exact latitude.

Mr. Staring (Reading): “You can say how many more miles it was on the route he took than the other one, but as far as latitude, and as far as



(Deposition of Robert Craig.)

courses, I will object to it on the ground of the restriction.

I will ask the Captain: Wasn't the route that you were to take—weren't you instructed that those were restricted courses and that you should not repeat the courses that you took?

Mr. Long: (Reading.)

"A. Yes, and I am not repeating any course.

Mr. Staring: "Yes, but I say you were advised as to that, were you? A. Yes."

Mr. Staring: "And during the conditions existing in Korea, those were considered quite secret, weren't they? A. They were."

Mr. Staring: "Have you been relieved from that obligation not to repeat those? A. No."

Mr. Ferguson: "Then I ask counsel to cooperate because I don't think the Captain would answer the question [104] under the circumstances."

Mr. Knudsen: "Do you object to my asking whether it is more southerly?"

Mr. Staring: "No, I don't, the number of miles, no, I don't object to that."

Mr. Knudsen:

"Q. Captain, was that route a more southerly route than the composite route?

"A. It was, yes.

"Q. Did you actually go to Yokohama?

"A. No, we didn't.

"Q. Where did you go?

"A. We went to Moji, Japan.

"Q. Do you know the distance from Seattle,

(Deposition of Robert Craig.)

“A. The log shows that the ship’s course was changed [107] at 0000.

“Q. On what day? A. On November 30th.

“Q. That is ship’s time? A. Ship’s time.

“Q. At that time how far out of Yokohama were you?

“A. From Yokohama I would judge from the position that the ship would be in when we altered course, that I was approximately 3 days from Yokohama.

“Q. When did you arrive at Moji?

“A. We arrived at Moji on December 6th, 1930.

“Q. Ship’s time? A. Ship’s time.

“Q. By my calculations, Captain—You check me on this, Captain—that is 6 days, 15 hours and 30 minutes after you received the message to divert, is that correct? A. That is right.

“Q. How long then, Captain, was the voyage prolonged by that diversion to Moji?

“A. By 3 days, 16 hours and 30 minutes.

“Q. When did you commence discharge at Moji, Captain?

“A. We commenced discharge on December 7th at 0830.

“Q. What time did you commence setting gear?

“A. We commenced setting gear, 5 gangs aboard commenced setting gear at 0800. [108]

“Q. And did the stevedores work the remainder of that day?

“A. They worked the remainder of that day, yes.

“Q. Who furnished the stevedores?

(Deposition of Robert Craig.)

“A. The M.S.T.S. arranged for them.

“Q. And did you discharge 2400 hours on December 8th?

“A. No. We commenced at 0830 on December 8th.

“Q. So there was no discharge from——

“A. Midnight.

“Q. ——0000 until 0830?

“A. That is right.

“Q. How long did you work?

“A. We worked right up until midnight, 2400 hours.

“Q. How long did you work on December 9th?

“A. On December 9th we worked from midnight until 1100, and then we worked from 1330 until 1430.

“Mr. Ferguson: Is that on December 10th?

“A. On December 9th, that is.

“Mr. Ferguson: All right.

“Q. Then what happened, Captain?

“A. Then we shifted out into the stream.

“Q. Why?

“A. Because the Harbor Master gave us instructions to move out there, and another ship was put into that berth.

“Q. Was that another M.S.T.S. ship? [109]

“A. I wouldn't know.

“Q. Was the Port of Moji controlled by the United States?      A. It was.

“Q. By the M.S.T.S.?

(Deposition of Robert Craig.)

“A. By the United States authorities. I wouldn't know who controlled it.

“Q. How long were you in the stream, or did you discharge at all while you were in the stream?

“A. No.

“Q. How long were you in the stream while the other ship was in your berth?

“A. We went back into berth on December 10 at 1600.

“Q. And commenced discharging when?

“A. And commenced discharging at 1930 on the 10th.

“Q. And when was discharge completed, Captain? A. 1015 on the 12th of December.

“Mr. Ferguson: Discharge was completed?

“A. Yes, discharge—I beg your pardon. Can we just review that December 11th. On December 11, at 2100, discharge was completed. And then, if my memory serves me right, the log book shows that there was a small amount of loading done from 1645, December 11, until 2100; there was a small amount of loading done. And from 0600 on December 12th until 1100 December 12th. [110]

“Q. There was loading done?

“A. Loading done. Now, that was no new cargo, because we had no new manifest, so I believe that that was cargo that had been shifted at the convenience of the longshoremen to get at cargo which they required.

“Q. How much of the cargo, approximately, was discharged at Moji?

“A. 2800 tons of cargo was discharged there.

(Deposition of Robert Craig.)

“Q. What was your total cargo?

“A. The total cargo was 9,365 tons, I believe.

“Q. Do you recall the cargo handling facilities at Moji?           A. I do, yes.

“Q. How many berths were there at Moji?

“A. I couldn't tell you the exact number of berths at Moji, but Moji was one of the principal ports for the southern island of Japan, which is Kyushu, and had facilities for handling a good many ships.

“Q. What sort of stevedoring facilities were there available at the port?

“A. There was ample labor available, as far as I know, native longshoremen.

“Q. What sort of supervision did they have?

“A. The army supervised them, and while we were alongside the wharf discharging, native longshoremen [111] discharging the ship onto these lift-trucks with the skids which were operated by U. S. servicemen.

“Mr. Ferguson: Commonly known as fork lift-trucks?

“A. Yes, fork lift-trucks.”

Mr. Knudsen: (Reading.)

“Q. Were there facilities for unloading cargo into barges in the harbor?

“A. There were. It was commonly done.

“Q. Was the Moji Harbor congested?

“A. No, I wouldn't say it was congested. It is a big harbor, and it holds a lot of ships.

“Q. Based upon your observation of the facili-



(Deposition of Robert Craig.)

ties available that you actually saw and observed, could your entire cargo have been unloaded at Moji?

“A. It certainly could, according to the facilities I observed.

“Q. Captain, upon what do you base the statement you have just made that the ship could have been unloaded at Moji?

“A. On the fact that I know the facilities of the Port of Moji, having been in there quite a number of times.

“Q. Captain, is your opinion the same, if it were based upon your actual observation of the facilities that were there at this time in question, to wit, from December 7, 1950, through December 12, 1950? [112]

“Mr. Ferguson: I think the question is unintelligible. I object to it. It is improper.

“Mr. Knudsen: You may answer. Do you understand the question, Captain?

“The Witness: No. Could you just rephrase it?

“Q. (By Mr. Knudsen): Let me put it this way: Was there an M.S.T.S. representative at Moji? A. There was, yes.

“Q. Did you report to him and receive instructions from him? A. I did, yes.

“Q. How many times were you ashore from December 6th through the 12th, do you recall?

“A. I can't recall the number of times, but I was ashore and met him quite often because the office was just at the end of the wharf.

(Deposition of Robert Craig.)

“Q. Did you have an opportunity to observe the facilities for discharging vessels that were there at Moji at that time? A. Yes.

“Q. Based upon your observation of these facilities could this ship have been completely discharged at that time, using the facilities at hand?

“A. There was untold wharfage space, and if they [113] wanted there were plenty of barges in the stream, and they used the stream often in commercial discharge, so there was both facilities out in the stream and alongside for discharging the vessel.

“Q. Was there labor available?

“A. From my observation there was plenty of labor available.

“Q. Instead of completely discharging what instructions did you receive from the M.S.T.S.?

“A. I received instructions from the M.S.T.S., after having discharged 2800 tons of Air Force cargo to proceed to Kure and discharge the remainder of the cargo.

“Q. What time did you leave Moji?

“A. We left Moji on December 12th at 1532.

“Q. And when did you arrive at Kure?

“A. We arrived at Kure on December 13th, at 1041.

“Q. According to my figures, Captain, that is an elapsed time of 19 hours and 10 minutes, is that correct? A. That is correct.

“Q. Were you at that time ready to discharge?

“A. We were ready to discharge then.

(Deposition of Robert Craig.)

“Q. Did you advise the Harbor Master at Kure to that effect?

“A. Not in writing, but the Harbor Master came aboard when the ship came in, and he was told at that time that we were [114] ready.

“Q. When did discharge commence at Kure, Captain?

“A. Discharge commenced at Kure on January 12, 1951, at 1115.

“Q. What happened at 1115? When did they start to rig the vessel, Captain?

“A. They started to rig the vessel at 0900, and the first hoist was out of No. 3 hold at 1115.

“Q. According to my figures, from the time you arrived until they started to rig the vessel, there was a total elapsed time of 29 days, 22 hours and 20 minutes in the Harbor at Kure awaiting a berth, is that correct?      A. I agree.

“Q. Was the Harbor Master expecting you when you arrived at Kure?

“A. Yes. The Harbor Master came aboard when we arrived there, and I asked him when he came aboard, I asked him when——”

Mr. Staring: We object to that as hearsay.

The Court: You changed that question?

Mr. Knudsen: Yes, I changed the question.  
(Reading.)

“Q. Captain, who came aboard from the Harbor Master's Office when you arrived at Kure?

“A. One of the Harbor Master's assistants. His name [115] was Captain Robertson.

(Deposition of Robert Craig.)

“Q. And did he advise you when you were to be unloaded?

“A. I asked him when he expected to have the ship discharged, and he told me then that——”

Mr. Staring: No. We will pass that.

Mr. Knudsen: On the bottom of the page——

“Q. Would you please answer giving me the substance of Captain Robertson’s conversation with you as to when he intended to discharge the vessel?

“A. He didn’t tell me when he intended to discharge the vessel, but on my asking him when he expected that we would be fully discharged, he told me that he expected to discharge us by Christmas of 1950.

“Q. Skipping for the moment to the actual discharge, at what hour was discharge completed, taking the commencement on January 12 at 0900 when they started to set gear—and I refer you to January 19th, the log entry therefor.

“A. 0730 on January 19th.

“Q. According to my figures, Captain, that is an elapsed time for discharge at Kure of 6 days, 22 hours, 30 minutes; is that correct?

“A. I agree, yes.

“Q. Did you discharge the entire remainder of your cargo at Kure? [116]           A. Yes.

“Q. How did the discharge progress with respect to hours worked during the day?

“A. They worked the full 24 hours—of course, taking time off for meals when they were discharging.

(Deposition of Robert Craig.)

“Q. Did they work 7 days a week?

“A. They worked continuously from the time, except for a period when they had to take us back to the stream, if I remember right.

“Q. A short period was that?

“A. Yes. On January 14th they took us back out into the stream from the wharf.

“Q. How long was the discharge interrupted?

“A. They ceased work on that day, January 14th, at 1200, and in the stream they resumed discharging us at 1550.

“Q. Was that overside into barges then?

“A. That was into barges.

“Q. And when did you return to your berth?

“A. We completed discharge out in the stream at 0730 on the 19th.

“Q. Was the discharge commenced in berth, Captain, and then completed in the stream overside into barges?      A. Yes.

“Q. And it was completed at 0730 on January 19th? [117]      A. Yes.

“Q. When did you sail?

“A. We sailed on January 19th at 1212.

“Q. Now, Captain, going back to the period in which you lay at anchor in the stream awaiting a berth at Kure for discharge, you say you were first advised by Captain Robertson that you would be unloaded by Christmas. Thereafter did you inquire, make any inquiries of the Harbor Master for orders for discharge?

“A. I went ashore almost every day to the



(Deposition of Robert Craig.)

Harbor Master's office, and every time I was in his office I asked him when he was going to start discharging us.

"Q. Now, did Captain Robertson advise you why you were not discharged for the period that you lay in the harbor?

"A. Well, he told me that there were other ships that they wanted the cargo from right away.

"Q. Did you receive any further advice from anyone in the Harbor Master's office as to why you were not discharged?

"A. Well, there was an assistant there, a Master Sergeant, I believe he was, and I had a talk with him one day in the office there, and he—he did tell me that they were making a new ammunition dump and that we wouldn't be discharged until that was ready to receive the ammunition. [118]

"Q. This was a Master Sergeant of the United States Army?           A. Yes.

"Q. Was this Captain Robertson's assistant?

"A. He was in Captain Robertson's office, yes.

"Q. And do you recall his name?

"A. No, I can't recall his name.

"Q. Was he is Nisei Japanese?

"A. He was a Nisei Japanese. That is the only identification I have of him.

"Q. Do you know who the Harbor Master was?

"A. He was an Army Colonel, but I don't know his name.

"Q. Of the United States Army?

"A. I don't recall his name. Yes.

(Deposition of Robert Craig.)

“Q. Did you ever meet him?

“A. I did. I met him once.

“Q. Did he advise you why you were not being discharged?

“A. He never advised me as to why. I asked him but I could never get any satisfactory answer.

“Q. Captain, when you were finally discharged were you advised why you were being discharged?

“A. Well, prior to discharge there was a civilian, I believe he was the United States Ammunition Inspector for that area, came aboard, and it was from him that I [119] first received information that they were going to start discharging me, and he came aboard, I think it was about January 10th, and told me that he had received—he told me that he had received orders from the Logistics Command in Yokohama to get the ship discharged as quickly as possible and get her back to Seattle as the charter had expired.

“Q. Was this man an American?

“A. Well, I wouldn't know.

“Q. Well, I mean, he was not a Japanese?

“A. No, he was not a Japanese.

“Q. He was an employee of the United States?

“A. He was, yes.

“Q. During this approximately 30 days, Captain, did you receive orders for discharge prior to the time that you were actually discharged?

“A. Yes.

“Q. Who gave you your final orders for discharge, your instructions?

(Deposition of Robert Craig.)

“A. The first knowledge I had, as I have said already, was from this gentleman who came aboard; and then someone from the Harbor Master’s office came out and told me to have the ship ready for going alongside to discharge, and they would send a pilot out.

“Q. Prior to that time had you received any other instructions for discharge? [120]

“A. When I was over in the Harbor Master’s office, I can recall that twice I was told to have the ship ready, that they were going to take her alongside, and then these orders were canceled.

“Q. You do not recall the approximate dates of those advices?

“A. No, I don’t remember now—It is so long ago.

“Q. How many ships were in the harbor when you arrived at Kure, do you recall?

“A. I could not state a definite number, but there were—well, to hazard, I would say 4 or 5 ships in the harbor.

“Q. Were those vessels unloaded before the SS Lake Sicamous was unloaded?

“A. All I can say is that they all left the harbor before I did.

“Q. How many vessels came into the harbor while you were at anchorage?

“A. Again as to numbers I couldn’t be definite.

“Q. To the best of your recollection.

“A. But there were other vessels. I would say

(Deposition of Robert Craig.)

there were two or three came in each week while we were at anchor there.

“Q. Were any of those vessels unloaded prior to the time that you were discharged? [121]

“A. They were, yes.

“Q. How many of them, do you know?

“A. No, I don't know that.

“Q. Do you recall how many vessels were still in the harbor when you were given a berth for discharge?

“A. I can't recall the number, but there were vessels out at anchor, I know.

“Q. Were vessels discharged in turn at Kure?

“A. There didn't seem to be any regular order of turn whatsoever.

“Q. Do you know upon what basis vessels were discharged?

“A. The only thing I can say is that I was told that vessels which had just come in had cargo which was urgently required, and they took them before they took me.

“Q. Now, how many berths were available for unloading vessels at Kure?

“A. To my recollection, there were four berths.

“Q. And they—would they accommodate four ships? A. I believe they would.

“Q. Did they also discharge vessels into barges?

“A. They did, yes.

“Q. What stevedoring facilities were available?

“A. They had native longshoremen doing the actual discharging. [122]

(Deposition of Robert Craig.)

“Q. And who supervised them?

“A. Under the supervision of army personnel.

“Q. Do you have an opinion, based upon your observation, your actual observation while in port at Kure as to how long it would have taken to discharge your vessel if it had been discharged in its regular turn?”

Mr. Staring: Skip that.

Mr. Knudsen: (Reading.)

“Q. First, Captain, I ask you if you have an opinion. A. Yes, I have an opinion.

“Q. What is that opinion?

“A. In my opinion the vessel should have been discharged within seven days from the time of commencing discharge.

“Q. And do you have an opinion as to how long you would have waited for a berth if you had been given a berth in turn, in your regular turn?

“A. In my recollection there were two ships in the harbor that went into the wharf after I arrived, and on that basis I would say that I may have had to wait six or seven days and then gone alongside to discharge.

“Q. Captain, in case I haven't made it clear now, the Army had its own discharge facilities and harbor facilities there at Kure, is that correct?

“A. Yes. [123]

“Q. Was there an M.S.T.S. representative there? A. Not stationed at Kure, no.

“Q. Did any M.S.T.S. representative contact you at Kure?



(Deposition of Robert Craig.)

“A. Not until late in January when I got word to start discharge, and then the representative came down from Kobe.

“Q. And did he give you any instructions at that time?

“A. He gave me instructions that after discharge I was to go back to Seattle.

“Q. Did he give you any instructions regarding refueling or taking on supplies?

“A. Yes. I was instructed that after discharge I had to go around to Kobe and there refuel and take on the necessary ship's stores, food, and so forth, ship's supplies sufficient to take me back to Seattle.

“Q. And when did you depart from Kure to Kobe—Directing your attention, Captain, to the January 19th log.

“A. We left Kure at 1212 on January 19th for Kobe.

“Q. When did you arrive at Kobe?

“A. We arrived at Kobe on January 20th, at 1840.

“Q. Captain, by my figures that is 1 day, 6 hours and 28 minutes elapsed time, is that correct?

“A. That is correct. [124]

“Q. And did you refuel at Kobe?

“A. We refueled at Kobe.

“Q. How long did that take?

“A. We commenced refueling at 2300 hours on January 20th, and completed loading fuel at 0045.

“Q. On what date?           A. On January 21st.

(Deposition of Robert Craig.)

“Q. Now, Captain, when did you depart from Kobe?

“A. We left Kobe on January 21st, at 1230.

“Q. And what did you do in Kobe other than take on fuel?

“A. We took on ship's stores at Kobe.

“Q. Where did you get your fuel?

“A. From a Japanese tanker, which came alongside and supplied us with fuel oil.

“Q. Do you know where that tanker had come from?

“A. Well, when we left Kure she was in Kure and followed us around.

“Q. Why didn't they refuel you at Kure, Captain? A. I wouldn't know that.

“Q. Did you receive any instructions from the M.S.T.S. representative at Kobe?

“A. I got my instructions in Kobe to return to Seattle, Washington.

“Q. Do you know, Captain, what the steaming time would [125] be from Kobe to Yokohama at the normal speed of the SS Lake Sicamous?

“A. Well, I should say about 15 hours.

“Q. When did you depart from Kobe?

“A. We left Kobe at 1230 on January 21st, 1951.

“Q. When did you arrive at Seattle?

“A. At 0715 on February 10th.

“Q. According to my calculations, Captain, that is a total elapsed time for the second voyage, from the commencement of the second voyage to rede-

(Deposition of Robert Craig.)

livery of 122 days, 2 hours, 24 minutes, is that correct?"

The Court: That is 122 days?

Mr. Knudsen: And 2 hours and 24 minutes.

The Court: That is from what point to what point?

Mr. Knudsen: That is from the commencement of the second voyage to redelivery.

The Court: The second voyage commenced where?

Mr. Knudsen: Commenced in Seattle. That is to say, your Honor, if I may make an explanatory comment——

The Court: Well, I thought this Master had been talking about one voyage, the voyage that was from November some time all through this thing.

Mr. Knudsen: That is right, your Honor. That is [126] the second voyage.

The Court: Well, that is the voyage he is talking about, is that right?

Mr. Knudsen: Yes, your Honor.

The Court: Beginning when? November what?

Mr. Knudsen: The conclusion of voyage one, if the Court please, on page 20 of the deposition, was October 14 at 0536 G.M.T., and the way the Captain figures is that the conclusion of one voyage is the commencement of the next under these charters.

The Court: But the only things you are concerned with here in this deposition up to this time are the various matters and things that happened

(Deposition of Robert Craig.)

as represented in this deposition concerning the second voyage, is that right?

Mr. Knudsen: Yes, although we did briefly cover the first voyage, that is, for example, your Honor, to show reasonable dispatch on the first voyage, what reasonable dispatch is.

The Court: When did this second voyage begin according to counsel? When is it? November what?

Mr. Staring: The second voyage officially began October 14th, but the ship actually departed, took her departure, from Port Angeles on November 10th. [127]

The Court: November 10th, is that right?

Mr. Knudsen: Yes, that was after she was loaded, of course.

The Court: Well, when do you claim that the voyage began on October 14th?

Mr. Knudsen: On October 14 at 0536 G.M.T.

The Court: And ended when? What date?

Mr. Knudsen: Ended February 12.

The Court: That is when it arrived in Seattle?

Mr. Knudsen: That is redelivery, February 12 at 2400.

The Court: That is when it arrived at Seattle from Kobe?

Mr. Knudsen: No. That is when she was redelivered. She was redelivered two days after she arrived.

The Court: Well, then——

Mr. Knudsen: The arrival time in Seattle was

(Deposition of Robert Craig.)

0715 on February 10th and redelivery was made on February 13th at 0800 G.M.T.

The Court: Then on February 12th——

Mr. Knudsen: On February 12th, it was 2400 P.S.T.

The Court: The date of redelivery then is the 12th. Do you both agree on that?

Mr. Knudsen: Yes. [128]

Mr. Staring: Yes.

Mr. Knudsen: The only reason I made the changes to G.M.T. was because we had a conversion from daylight to standard.

The Court: Where did you read that?

Mr. Long: From the bottom of page 62 to the top of page 63, your Honor.

The Court: The proceedings today will recess there and we will begin this tomorrow morning at ten o'clock.

The Court is adjourned until tomorrow morning at ten o'clock.

(At 4:00 o'clock p.m., Wednesday, August 3, 1955, proceedings recessed until 10:00 o'clock a.m., Thursday, August 4, 1955.) [129]

August 4, 1955, 10:00 A.M.

The Court: I wish to proceed with the reading of the deposition in the case on trial.

Mr. Knudsen: If the Court please, we will resume on the bottom of page 62, the last question on that page.



(Deposition of Robert Craig.)

The Court: You may proceed. Will you repeat the question even if you have already read it?

(Whereupon Mr. Knudsen continued to read the questions and Mr. Long resumed the stand and continued to read the answers.)

Mr. Knudsen: (Reading.)

“Q. According to my calculations, Captain, that is a total elapsed time for the second voyage, from the commencement of the second voyage to redelivery of 122 days, 2 hours, 24 minutes, is that correct? A. I agree with that.

“Q. And that makes a total elapsed time from delivery of the vessel to redelivery of the vessel under the charter of 192 days and 13 hours, is that correct? A. That is correct.

“Q. Captain, will you waive your signature to this [130] deposition? A. I will, yes.”

Mr. Staring: If your Honor, please, Mr. Cushman would be willing to take the stand and relieve Mr. Long on cross-examination.

Mr. Long: It is quite all right with me. It is quite agreeable to me to continue.

The Court: We will let Mr. Long continue.

(Whereupon, on cross-examination, Mr. Staring read the questions and Mr. Long continued to read the answers.)

(Deposition of Robert Craig.)

Cross-Examination

Mr. Staring: Let us skip this preliminary over to page 64, the second question on page 64. (Reading.)

“Q. Captain, in the log books, when you make a mistake in the logs, do you erase them, or do you write over them?

“A. The officer had instructions to score it and write in the amended——

“Q. You mean to erase or just to scratch a line through it? A. Scratch it. [131]

“Q. Scratch a line through it? A. Yes.

“Q. They are not allowed to erase?

“A. No, they are not supposed to.

“Q. I want to show you on October 20th an illustration there and ask you if there is an erasure of the word and “gangs” is written over it. Doesn’t that look to you like it has been erased and written over?

“A. That certainly looks like a smudge there or something.

“Q. Yes, I just wanted to get your opinion on it.

“A. Yes, it is a smudge.

“Q. And that is in violation of your directions?

“A. Yes.

“Mr. Knudsen: Did you say it was an erasure, Captain?

“A. No, I wouldn’t know.

“Mr. Ferguson: It looks like one, he said.

“A. I said it looks like a smudge there.

(Deposition of Robert Craig.)

“Q. Now, do you sign the log book on each page?

“A. Not the scratch log book.

“Q. The rough log?

“A. Not the rough log, no.

“Q. It is only signed by the officers who make the entries? [132]      A. That is right, yes.

“Q. Now, Captain, how long have you been going to sea, did you say?      A. About 16 years.

“Q. And during that time you sailed during the second war, didn't you?      A. Yes, I did.

“Q. And in what oceans did you sail during the war?

“A. I sailed during the war on the Atlantic, and through the Indian Ocean over to Bombay. That was my main——

“Q. You sailed on the Pacific and into Oriental ports during the war?

“A. Not during the war.

“Q. And immediately after the war?

“A. Not immediately after the war.

“Q. In 1945?

“A. Not until I came out to Canada to join the Western Canada Steamships.

“Q. Well, in these East Coast ports during the war, did they have priorities in berthing vessels in accordance with the needs of the cargo aboard, when you were sailing during the war?

“A. I wouldn't know.

“Q. Do you know whether or not, for instance, that a vessel discharging at a wharf would be taken away from [133] her discharging at the wharf to

(Deposition of Robert Craig.)

allow a reefer to come in, for instance? Do you know what I mean by 'reefer'?

"A. Yes, a refrigerator ship. I wouldn't know.

"Q. You didn't know anything about those priorities? A. No.

"Q. Now, how many times have you been in the Ports of Yokohama, Kobe, Moji and Kure?

"A. I couldn't state a definite number of times without referring to log books.

"Q. I mean outside of these log books.

"A. Yes, I know. I am trying to recall.

"Q. Well. if you can't recall that right now, let me ask you then: Were you ever in the Port of Kure prior to the time you were there in 1950 on the Lake Sicamous?

"A. I never was in the port of Kure before.

"Q. Were you ever in the Port of Moji, Japan, prior to the time you were there in 1950 on the Lake Sicamous? A. I was, yes.

"Q. How many times?

"A. I can't remember the number of times. All I know is that I have been there two or three times.

"Q. Were you there during any times prior to October, 1950, where war conditions were existing at the vicinity, such as the Korean hostilities, prior to October of 1950?"

Mr. Knudsen: I waive—— [134]

The Court: Start after the discussion.

Mr. Long: Yes, your Honor. (Reading.)

"A. Not in Moji.

"Q. Now, when did the Korean hostilities which

(Deposition of Robert Craig.)

were existing in October of 1950 when you were in Moji, and in December when you were in Kure, start?

A. I beg your pardon.

“Q. I will reframe it for you. When did the Korean hostilities start in 1950, if you recall?

“A. 25th of June, 1950, I believe is when the Korean War started.

“Q. That was June—— A. 25th.

“Q. ——1950?

“A. 1950, if my memory serves me right.

“Q. And that was prior to the time that the charter of the Lake Sicamous was made to the M.S.T.S., wasn't it? A. Yes.

“Q. Because the charter, as I recall, was effective as of August 4, wasn't it? A. Yes.

“Q. Now, when the charter was made and you got your directions to go there to load, you understood that you were to load ammunition to be transported to the Far East for the United States, didn't you? [135] A. Yes.

“Q. And this ammunition was to be used by the United States and their allies in this conflict, didn't you? A. Yes.

“Q. You also knew that there were various types of ammunition which would be loaded on your ship, didn't you? A. Yes, I did.

“Q. Now, when you went to load the ammunition you realized that that ammunition had to have careful stowage ashore, didn't you? I mean they couldn't leave it on the docks, is that correct?

“A. Quite right.



(Deposition of Robert Craig.)

“Q. Have you ever seen the vetments in which they put the railroad cars in which ammunition is being transported?

“A. No, I never examined them.

“Q. Underground vetments where the cars are run in and run out and loaded?

“A. No, but I have seen them going through the Ordnance Depot at Bangor, but I have never been in there.

“Q. You also know that under the regulations, for the protection of both your ship and the surrounding community, that they could not have too much ammunition congregated at any special point, didn't you? In other words, there were a certain number of cars, or a certain amount that could be set on the dock and no more? [136]

“A. Well, I was not informed of any regulation.

“Q. You did not know about that, did you?

“A. No.

“Q. You did not realize that there was a great danger in that situation if they got too much?

“A. Well, I realized there was danger, but I was not informed of any regulations.

“Q. Well, you have heard, of course, of the Port Chicago Explosion Case, haven't you, in California, where two ships blew up when unloading ammunition? A. No, I can't recall.

“Q. So, as far as the reasons causing delay in the loading and the discharge of ammunition, you personally don't know what the causes might be, do you? A. I don't know, no.

(Deposition of Robert Craig.)

“Q. All right. Now, you were loading at Bangor. Was that an ammunition depot?

“A. It was, yes.

“Q. You loaded at Bangor on the first shipment?      A. On the second shipment.

“Q. Yes, on the second shipment.

“A. On the second shipment.

“Q. Were you unduly delayed in loading your first shipment; or do you figure that you loaded that in about the regular time? [137]

“A. The first shipment, I reckon, was loaded in about the regular time.

“Q. About the regular time. No complaint about that one, is there?      A. No.

“Q. And in regard to the first shipment, when you unloaded it, there was no delay unduly in the discharge of that cargo, in the first shipment?

“A. No.

“Q. Now, when you left the port, going over to the Far East, you received instructions that you might receive radio messages to divert your course at some time, to some particular point, or maybe different points, is that correct?

“A. As far as I can recall, the routing instructions I was given, gave me a reference point to which all instructions would be referred.

“Q. Yes, that is right. And then they gave you the code, didn't they, at that time, a secret code?

“A. Yes.

“Q. And you kept that secret code locked up safely in the safe, didn't you?      A. Yes.

(Deposition of Robert Craig.)

“Q. And no one else had access to that except yourself? A. That is right. [138]

“Q. Did you allow the First Officer to have it?

“A. No, the First Officer did not have it.

“Q. Those were the same type of instructions that you received when you were in the Atlantic at certain times, when you were operating during the war; similar instructions to that?

“A. Somewhat similar.

“Q. Yes, somewhat similar. I mean you had a code. A. Yes.

“Q. And you locked it up in the safe?

“A. Yes.

“Q. And you had a letter of instructions which you had to seal? A. Yes.

“Q. And you put it in the safe, and you could not open it until a certain specified date, is that right? A. Yes.

“Q. And you did not know where you were going until you opened that letter at approximately a certain point, and then your course was changed, is that correct? A. Yes.

“Q. Yes. Now, Captain, did you have a copy of the charter party, too? A. Yes.

“Q. So you familiarized yourself with the [139] charter party to know what you should do and should not do, didn't you? A. Yes.

“Q. And you familiarized yourself with the Liberties Clause in the War Risk Addendum to the charter, didn't you? A. Yes.

“Q. For the purpose of refreshing your——”

(Deposition of Robert Craig.)

Mr. Staring: We needn't read that.

Mr. Knudsen: Your Honor, for the record I will renew my objection now to any question regarding the Liberties Clause in the charter party on two grounds: (1) It is beyond the scope of the direct examination; and (2) The Liberties Clause is completely irrelevant to this action since it gives the owner certain liberties, gives him the privilege to follow certain instructions and do certain things without being guilty of a breach of charter party. We are here dealing with an alleged breach by the charterer and not the owner, and the Liberties Clause is completely irrelevant to this particular action.

Mr. Staring: We may pass over this part of the examination.

The Court: Do you wish to withdraw the question? I wish this deposition had numbered lines like the Rules require. I wish you gentlemen in the future [140] would request the reporter to use numbered lines.

Where do you want to omit?

Mr. Staring: I will withdraw the last question on page 74.

The Court: That is: "For the purpose of refreshing——"

Mr. Staring: "For the purpose of refreshing——"

The Court: Withdraw that and the answer of the witness to that, and then you continue to withdraw from consideration by the Court down to what

(Deposition of Robert Craig.)

line and on what page? The page on which the beginning of this matter just referred to occurs is 74.

Mr. Staring: I would like to withdraw over to page 76, the first answer of the witness.

The Court: You may do that. It is withdrawn, and the Court will disregard it. I need to locate that first. Is it in the middle of the page?

The Staring: The first answer of the witness on page 76 is on the fourth line. It is: "I read the whole charter party through."

The Court: Is that what you wish to begin reading?

Mr. Staring: Yes.

The Court: All right. You may proceed.

Mr. Staring: Will you resume there, Mr. [141] Long?

Mr. Long: Yes. (Reading.)

"A. I read the whole charter party through.

"Q. And including the War Risk Addendum Clause, didn't you? A. Including that.

"Q. So if that clause is incorporated in the addendum clause, you read it?

"A. If it was in the charter party as stated, yes.

"Q. Well, you understood, did you not, that you were to comply with all orders that were given to you? A. In the charter party.

"Q. As to any port or place which you should go when you got out to this point you have referred to.

"A. Well, my understanding is that I was under



(Deposition of Robert Craig.)

the orders of the charter from the time that I came under the charter.

“Q. Surely. And you understood that in going into these places such as Kure, and so forth, and Moji, that was a port to which you were authorized to go, if required, by the United States Government officials or officials of the Allied Nations, didn't you?

“A. I understood that I would go wherever instructed.

“Q. Yes. Now, let us get into the harbor of Kure. You said there were some other vessels in there. Now, do you remember the SS Hunter Victory, whether she was [142] in there at the time.

“A. I can't swear to any.

“Q. That is in December and January of 1950 and 1951?

“A. I couldn't swear to the names of any there.

“Q. Well, do you remember a vessel such as the Clarksburg Victory that got in there in December; do you remember her?

“A. The name sounds familiar.

“Q. The Earlham Victory.

“A. I can't recall that name.

“Q. Well, do you remember the Lynn Victory?

“A. No.

“Q. Do you remember the Olympic Pioneer went in in December and out in January?

“A. No, I can't remember the names of them.

“Q. Do you remember the Hibbing Victory went in in December and came out in January?

(Deposition of Robert Craig.)

“A. No.

“Q. Well, do you remember the Marquette Victory? A. I remember the Marquette, yes.

“Q. You remember her being in there?

“A. Yes.

“Q. You remember she went in there in December and did not come out until January?

“A. No, I couldn't definitely state. [143]

“Q. But you remember seeing her in there?

“A. I remember seeing her, yes, I remember her.

“Q. Now, do you remember the Berea Victory?

“A. Yes, I remember that name.

“Q. Do you remember her?

“A. I remember that name, yes.

“Q. And she was in there in December and came out in January?

“Mr. Knudsen: Are you asking the Captain if he remembers whether or not she went in in December and came out in January?

“Mr. Ferguson: I will ask him.

“Q. Do you remember her going in in December and that she went out in January?

“A. I can't remember when they came in and when they went out.

“Q. Do you remember her being in there before you went in there, when you came into Kure?

“A. I could not state definitely when she was in there.

“Q. You do not recall that either of those vessels, that you noticed them after you came in, do you? A. No.

(Deposition of Robert Craig.)

“Q. Now, when you were being advised, given any advice relative to staying in Kure, or when you were going to [144] get out of Kure, did I understand you to say that you were told that certain ammunition had to be out and they had to take that first before they could take other ammunition?

“A. I was told that there was certain ammunition, and I was told that the Air Force ammunition was what they wanted out of the ships.

“Q. Do you recall any unusual incidents, hostilities along in November and December of 1950?

“A. About the time I was in Moji there was an exacuation of Hungnam.

“Q. And they were needing ammunition very badly then, weren't they?

“Mr. Knudsen: If you know, Captain.

“A. Well, were you told they were—for the Air Corps?

“A. I was told they wanted ammunition for the Air Corps, yes.

“Q. Now, at Moji, did you say that Moji was not congested when you were in there, having discharged 2800 tons of ammunition?

“A. I can't remember any congestion.

“Q. You can't remember any congestion?

“A. Any congestion, no.

“Q. Do you remember whether there was a heavy outloading of ammunition in Moji at the time you were there? [145]

“A. No, I can't remember.

“Q. You know what I mean by 'out-loading'?

(Deposition of Robert Craig.)

“A. Yes, loading into other vessels.

“Q. And sending it out? A. Yes.

“Q. You can't remember that? A. No.

“Q. Do you remember of any number of ships being sent from Moji down to Kure?

“A. I was not aware of what ships were sent down to Kure from Moji, no.

“Q. Do you know that there were some vessels outside of your own sent from Moji to Kure?

“A. Not to my knowledge, no.

“Q. You don't recall of any? A. No.

“Q. At Moji did you discharge all of your Air Force cargo?

“A. Yes, all of the Air Force cargo.

“Q. At Moji? A. At Moji, yes.

“Q. Your other cargo, without describing it, was for the general army, was it?

“A. It was, yes.

“Q. Land forces? [146]

“Q. Now, did you write up a voyage abstract to be given to the government? A. Yes.

“Q. And in that you gave the hours and voyage details, did you? A. Yes, we did.

“Q. And that was a correct abstract, was it?

“A. It was, yes.

“Q. I will have you look at this and ask you if that is a synopsis, or the synopsis that you gave of the charter party? A. Yes, that is.”

Mr. Staring: May I inquire whether that synopsis is attached as an exhibit to the Court's copy of the deposition?

(Deposition of Robert Craig.)

The Court: (Handing original copy of deposition to Mr. Staring.) Will counsel look at the original number of the deposition and see if he can answer his own question?

Mr. Staring: It is so attached, your Honor.

The Court: Well, do you wish to have it identified by this testimony as an exhibit in this case?

Mr. Staring: Yes, your Honor, I do.

The Court: It should then be detached and by the Clerk given a new number in sequence with the [147] other exhibits.

Mr. Long: Would that be Exhibit 19?

The Clerk: Libelant's Exhibit No. 19.

(Voyage abstract marked Libelant's Exhibit No. 19 for identification.)

The Court: By what number or identification mark was that previously known if you can now state it, Mr. Staring, agreeably to other counsel?

Mr. Staring: It was put into the deposition as Government Exhibit No. 1 for identification.

The Court: Is the word "Government" a part of the nomenclature of the identity or identifying marks of the exhibit in the deposition?

Mr. Staring: In the deposition it is stated in that way. It is Government Exhibit No. 1 for identification.

The Court: Let the record show that what previously was referred to as Government Exhibit 1 in connection with the Craig deposition is now marked by the Clerk as Libelant's Exhibit 19.



(Deposition of Robert Craig.)

Mr. Knudsen: This is a respondent's exhibit, not libellant's.

The Court: What was it called in the deposition itself? [148]

Mr. Staring: I think we can call it an abstract.

The Court: I want to know what the deposition says it was by name or reference. What are the reference characters?

Mr. Staring: It was Exhibit 1 to the deposition, and it was referred to as a "voyage abstract," your Honor.

The Court: Then the word "Government" is not part of the former reference, is that right?

Mr. Staring: Well, yes, it is. That was referred to as Government Exhibit 1.

The Court: And the respondent called it that in the deposition or did the witness call it that or did anybody interrogating the witness ask that it be known as Government Exhibit 1?

Mr. Staring: I do not see that any one asked that it be known as Government Exhibit 1.

The Court: Where did any one call it Government Exhibit 1?

Mr. Staring: In page 83, the reporter in parenthesis has shown that he identified it as Government Exhibit 1 for identification.

The Court: Will you admit that is the way it was referred to in the deposition, Mr. Knudsen?

Mr. Knudsen: Yes, your Honor. [149]

The Court: Then Mr. Staring's statement is correct.

(Deposition of Robert Craig.)

The Clerk: It will be marked—re-marked—Respondent's Exhibit A-1.

(Voyage abstract re-marked Respondent's Exhibit A-1 for identification.)

The Court: Mr. Staring is examining this witness. Why would it be referred to as a Government exhibit? You are going to offer it in evidence, are you not or are you?

Mr. Staring: Yes, your Honor.

The Court: Well, let it be marked Libelant's Exhibit 19.

Mr. Knudsen: If the Court please——

The Court: Has it already been marked?

(The Clerk shows the exhibit to the Court.)

The Court: The Clerk has already marked this as Respondent's A-1.

You may proceed.

Mr. Staring: I should like to offer that in evidence at this time.

Mr. Knudsen: No objection.

The Court: Admitted. [150]

(Respondent's Exhibit No. A-1 received in evidence.)

Mr. Staring: At the bottom of page 83, Mr. Long.

Mr. Long: Yes, I have it.

Mr. Staring (Reading):

(Deposition of Robert Craig.)

“Q. Now, in the log book for September 20th I note that up here the entry is: 0800; the entry: ‘Work ceased to comply with army blackout.’ ‘0010, all clear; work resumed.’

“Were there many of those blackouts at that time while you were in Kure?

“A. That was in Mukilteo, wasn’t it?

“Q. Well, whether it was in Mukilteo, or not—I will reframe the question, though: That was in Buckner Bay, Okinawa?

“A. Buckner Bay, Okinawa, yes.

“Q. Now, did you have any blackouts over in Korea when you were there?

“A. No, I can’t remember any.

“Q. But you were always under orders to wait for blackout signals if they were given so you would stop work?

“A. If there would be any local instructions.

“Q. That would come from local [151] instructions?      A. Yes.

“Q. Now, did you know Colonel Sanderson in Kure?

“A. I don’t know the name of any of these gentlemen. I only know that I met a Colonel, but I couldn’t identify him by name.

“Q. Well, did they have a Port Commander at Kure?      A. They had, yes.

“Q. And he was a Colonel?      A. Yes.

“Q. And the Port Commander there was in command of the whole port, wasn’t he?

“A. Yes, as far as I know.

(Deposition of Robert Craig.)

“Q. And all vessels had to take their directions from him? A. Yes.

“Q. Is that correct? A. Yes.

“Q. Or his office? A. Yes.

“Q. Now, would you say that that Colonel is the one that talked to you at all, came aboard your vessel?

“A. I can't remember the Colonel ever having been aboard.

“Q. Yes. Now, do you remember a Colonel Blust being stationed in Kure? [152]

“A. I say I can't identify these gentlemen by name.

“Q. In other words, you can't identify any of the men that talked to you about the discharge?”

Mr. Knudsen: I object to that. There is no showing that these people ever talked to him.

Mr. Long: The answer is on page 86. I think I have an answer to read. (Reading.)

“A. The person I mainly dealt with was the Assistant Harbor Master, Captain Robertson.

“Q. Captain Robertson?

“A. Yes, Captain Robertson.

“Q. And he was in the Army, was he?

“A. Yes, in the Harbor Master's office there.

“Q. Of course, you don't remember his initials—Robertson?

“A. No. I remember Robertson's name.

“Q. Now, do you recall a Major Scales—you don't recall a Major Scales either, do you?

“A. No, I can't recall him.

(Deposition of Robert Craig.)

"Q. How would you describe this individual that you said came aboard and informed you that the vessel would have to go right on back to Seattle as early as possible?

"Q. Came aboard at what time?

"A. While you were in Kure, when you were discharging. Well, let us go back over it then. Now, did some individual [153] advise you that the charter party had ended, and the vessel was to go back? A. Yes.

"Q. And who was that individual?

"A. I can't remember his name, but I know that he was the U. S. Ammunition Inspector in that area.

"Q. That is at Kure? A. At Kure.

"Q. And was he a civilian or in uniform?

"A. He was in civilian——

"Q. Civilian clothes? A. Yes.

"Q. Can you describe him? Was he a tall man?

"A. He was fairly tall, yes, I would say about 5/10, 5/11.

"Q. Did he wear a mustache or no mustache?

"A. I can't remember.

"Q. Was he a big, heavy-set man, or was he skinny?

"A. He was not heavy-set. I would say just normal proportion to his height.

"Q. Weighed about 190, 200 pounds?

"A. I would say about 190.

"Q. About 190 pounds. Did he have any special appearance—gray hair?



(Deposition of Robert Craig.)

“A. I can't remember. I think his hair was kind of [154] sandy.

“Q. I am trying to get the best description I can because we want to locate him, Captain.

“A. Yes, yes.

“Q. You say he had kind of sandy hair.

“A. If my memory serves me right. I am pretty sure the Colonel must know him.

“Q. And what was his title, as you recall it?

“A. I don't know his title, but I know that in most of the Ordnance Depots you had these men. We had one, I remember, at Mukilteo, too, an Ammunition Inspector. But I don't know his official title.

“Q. You didn't receive any orders—you didn't receive orders from this man, though, did you?

“A. No, no orders.

“Q. They all came from the Command?

“A. From the Command, yes.

“Q. Now, outside of those that you spoke of, did you have any contact with any other port authorities? A. None in Kure that I can remember.

“Q. Did you have any communications with Western Canada Steamship Company, Limited, that is the owners of the ship? A. Yes.

“Q. How were they received—by wire? [155]

“A. Yes. I sent a telegram to my owners just after the new year, around January 3rd.

“Q. Advising them of your delay?

“A. Advising them of my delay and stating that

(Deposition of Robert Craig.)

it appeared to me that my stay in Kure was indefinite.

“Q. Now, did you get any reply? Where is that telegram? I mean, did you keep a copy of that telegram?

“A. No, I didn't keep a copy. That was sent through the Japanese Post Office there.

“Q. Oh, you sent that by mail?

“A. Through the Japanese Post Office. They sent wires there.

“Q. Well, that would be by mail?

“A. Yes, through the Post Office.

“Q. Did you send any radio messages?

“A. No.

“Q. Did you keep a copy of that message you sent to them? A. No, I didn't keep a copy.

“Q. Now, did you receive any messages from them? A. No.

“Q. From the owners? A. No.

“Q. Not during the entire time you were out there? A. No. [156]

“Q. Neither by radio or by mail?

“A. No. Not as far as I can remember.

“Q. Did you keep the manifests; did you make out the manifests or were they made up by the Army?

“A. They were made up by the Supercargo, I believe, employed by the Army.

“Q. Was a copy given to you?

“A. Yes, I believe I had a copy.

“Q. Did you give that to the owners?

(Deposition of Robert Craig.)

“A. I believe that would be kept in the ship’s files; I can’t recall.

“Q. You don’t recall whether you gave it to the owners? A. No, I can’t recall.

“Q. And all the manifest had was a list of the cargo, wasn’t it, aboard describing it?

“A. I can’t remember now.

“Q. The vessel was not overloaded, was it?

“A. Oh, no, no.

“Q. And it was properly stowed, wasn’t it?

“A. It was properly stowed and properly loaded, yes.

“Q. You had no difficulty about the cargo and the stowage? A. No, none at all.

“Q. The stowage plan, that just was a plan showing [157] where the cargo was stowed in the vessel?

“A. Yes.

“Q. Was there any criticism of that plan of stowage? A. No criticism whatsoever.

“Q. It was all right? A. Yes.

“Q. And it met with your approval in every respect? A. Yes.

“Q. You didn’t have any damage to the ship——

“A. No.

“Q. ——caused by the cargo?

“A. No, not at all.

“Q. Or by the loading, did you? A. No.

“Q. Now, you said something about, on the second voyage, that there was a delay in loading the vessel? A. Yes.

“Q. Now, was there any cargo alongside of the

(Deposition of Robert Craig.)

vessel at times when they were loading, when they were loading, that should have been loaded, or was the delay by reason of the cargo of ammunition not coming down alongside?

“A. I wouldn’t know what the reasons for the delay was.

“Q. You do not know what caused the delay?

“A. What caused the delay, no, sir. [158]

“Q. And you don’t remember, or know whether the cargo was there on the dock ready to be loaded in the vessel, do you, at the times that they had the stoppage of work?      A. No, I don’t.

“Q. Now, in loading cargo on Saturdays and Sundays they pay the seamen extra wages for doing that, don’t they?

“A. Of course, seamen do not do any loading.

“Q. I mean the stevedores. That is double time, isn’t it?      A. I don’t know.

“Q. Well, you know the customs of the ports in regard to loading cargo up and down the coast. Now do you know the custom with respect to paying time and a half or double time for stevedore work on Saturdays and Sundays and holidays?

“A. I believe they are paid overtime, but what the conditions of paying overtime are, I don’t know.

“Q. And you do not know either what the condition of the cargo was with regard to its availability at the time, or the availability of stevedores as to their willingness to work on holidays and Sundays, or any other causes for failure to work, or not work on Saturdays, Sundays and holidays, do you?

(Deposition of Robert Craig.)

“A. No, I wouldn’t know the reason. [159]

“Q. You do not know the reasons at all?

“A. No.

“Q. Now, were there certain areas on your voyage in which the seamen got overtime for being in dangerous areas?

“A. No, not on Canadian ships.

“Q. Not on Canadian ships. But there were zones on your trip in which American ships paid bonuses? A. Yes, but not on Canadian ships.

“Q. That was by reason of the Korean hostilities at the time, wasn’t it?

“A. I understand that.

“Q. Yes. Well, those conditions out there were practically war conditions, weren’t they, in your opinion, at Kure and those places?

“A. Well, everything was under the military, which I presumed would be war conditions.

“Q. Yes, and your delivering ammunition for use against the enemy? A. Yes.

“Q. I believe on direct examination you stated that at Kure you could have discharged in seven days? A. That is my opinion.

“Q. If the conditions were such that you would have no trouble in discharging; if the conditions were right? [160]

“A. That is, under normal condition.

“Q. Under normal conditions.”

Mr. Knudsen: That was not his testimony. His testimony was that if he had been given his regular turn he could have discharged in about seven days.



(Deposition of Robert Craig.)

Mr. Staring (Reading): "Now, just a minute. He was stating now that if he had normal conditions at the pier, is that correct, you could have discharged in seven days?

"A. If the ship was alongside and discharging I certainly believe that she could be discharged within seven days.

"Q. That is correct. Now, that, however, would be subject as to whether they could carry the ammunition away and stow it, is that correct?

"A. Well, of course.

"Q. You don't know about that?

"A. I wouldn't know anything about that.

"Q. Well, if you unload cargo it has to be taken away, doesn't it?

"A. It has to be taken away, yes.

"Q. It can't be unloaded unless it can be taken away from the wharf; otherwise, it is being piled up on the wharf, isn't that correct?

"A. Yes, that is right. [161]

"Q. Then, subject to it being normally taken away as you discharged it, then you could have unloaded in seven days?      A. Yes.

"Q. And that is your testimony, isn't it?

"A. Yes.

"Q. But you don't know what the conditions were with regard to stowing that cargo, do you?

"A. No.

"Q. You do know that they were out-loading a lot of cargo at Kure?      A. I don't know.

(Deposition of Robert Craig.)

“Q. Did I ask you that? You don’t know that?

“A. I don’t know that.

“Q. After that cargo was discharged do you know how it was transported to where it was going?

“A. I don’t know that. I don’t know how it was transported.

“Q. Yes.

“A. I know that evidently I was bringing ammunition over there to be used in the Korean War.

“Q. And it was going over to Pusan?

“A. Yes.

“Q. Yes. Do you know who the Marine Superintendent of the Western Canada Steamship Company, Limited, was on [162] February 12th?

“A. Captain Syllinge.

“Q. Do you know his signature?

“A. I can’t recall his initials just at the moment.

“Q. All right. I will show you here what purports to be a photostatic copy of a Redelivery Certificate.”

Mr. Staring: The redelivery certificate, your Honor, has already been introduced as Libelant’s Exhibit 3. (Reading:)

“Q. Do you recognize the signature?

“A. I recognize the signature, Captain Syllinge’s signature. K. T., I believe.”

Mr. Staring: On page 98—the first question:

“Q. Were there a great number or just a few barges at Kure?

“A. I didn’t see many barges at Kure, not a great number.

(Deposition of Robert Craig.)

“Q. Do you know when the Port of Kure was opened up? A. No, I don’t know.

“Q. And you don’t know the reason it was opened up, Kure?

“A. No, I don’t know the reason.

“Q. What was the name of the man from M.S.T.S., if you know, that you met at Moji?

“A. I can’t recall his name. All I remember about [163] him was that he was a young—I believe he was a non-commissioned officer.

“Q. Was he in uniform?

“A. He was in uniform, yes.

“Q. What was he, a Chief Boatswain or something like that? A. Yes, something like that.

“Q. Was he a Chief; had a lot of hash-marks on him?

“A. No. He was square-rigged, in an officer’s uniform; he had an officer’s uniform.

“Q. A Warrant Officer?

“A. A Warrant, I believe. I will honestly say that he gave me every assistance in his power.

“Q. This young Warrant Officer of M.S.T.S.?

“A. Yes, sir.”

Mr. Staring: That is all.

(Whereupon, on redirect examination, Mr. Knudsen read the questions and Mr. Long read the answers.)

(Deposition of Robert Craig.)

Redirect Examination

“Q. Captain, did you observe any hostilities on the shore at Moji? Was there any fighting on the shore at Moji?

“A. Fighting—no, I didn’t see any fighting.

“Q. You heard no rifle fire? [164]

“A. No.

“Q. Any artillery? A. No.

“Q. Was there any bombing in the harbor at Moji? A. None at all.

“Q. How about Kure? Did you observe any rifle fire on the shore in Kure?

“A. No, there was nothing there.

“Q. Any bombing of Kure?

“A. Nothing like that.

“Q. Any air raid alerts?

“A. No, no air raid alerts.

“Q. Any air raid alerts at Moji? A. No.

“Q. Was there any cargo piled on the wharves at Kure awaiting transportation away from the dock that you saw?

“A. Not for any length of time; just cargo there in the normal course.

“Q. Normal course of transition?

“A. Normal course of transition.

“Q. Now, did you observe any out-bound cargo being loaded aboard vessels at Kure?

“A. No. We didn’t know what was happening on the wharves. The vessels were working. We

(Deposition of Robert Craig.)

could not observe whether they were loading or discharging. [165]

“Q. How about at Moji?

“A. I can’t recall at Moji, whether there was any loading going on.

“Q. Now, with respect to the barges at Kure, you finished your unloading into barges in the middle of the stream at Kure, is that right?

“A. Yes.

“Q. And were there sufficient barges so they could discharge continuously from the hatches?

“A. Yes, they kept going.

“Q. You said that you heard this ammunition was being sent to Pusan. Are you just speculating, or do you know?

“A. No, I didn’t know it was being sent to Pusan. I said I knew that the ammunition that I was carrying was destined for the Korean War, but where or how it got over there, I don’t know.

“Q. How do you know they didn’t store it in Japan for future use?      A. I don’t know.

“Q. All right. That is what I wanted to get.

“Who prepared the stowage plan for the vessel at Bangor?      A. The Supercargo.

“Q. An Army Supercargo?

“A. Not in uniform; a civilian. [166]

“Q. Was he a representative of the owners or of the charterers?      A. Of the charterers.

“Q. Who prepared the stowage plan for the vessel at Mukilteo?



(Deposition of Robert Craig.)

“A. The same thing: A civilian Supercargo of M.S.T.S.

“Q. Did they give you copies of that stowage plan? A. If I recall, they did.

“Q. Do you know what happened to those?

“A. They should be in the ship’s files.

“Q. Did you take either of these voyages, either Voyage 1 or Voyage 2, under the charter, under convey? A. No.

“Q. Did you have any armament aboard your vessel? A. No armament.

“Q. Did you have any escort vessel at all?

“A. No escort.

“Q. Did you suffer any hostile attack on either voyage? A. No hostile attack.

“Q. On the first voyage you said you loaded primarily bombs, is that correct?

“A. That is correct.

“Q. On the second voyage you loaded 2800 tons of Air Force cargo, is that correct? [167]

“A. That is correct.

“Q. What was that generally, its category?

“Mr. Ferguson: I object to it, except ammunition, and I call the Captain’s attention to his orders.

“The Witness: All I understood is Air Force ammunition.

“Q. And what was the remainder?

“A. The remainder was general ammunition.

“Q. It was ammunition? A. Ammunition.

“Q. Now, with respect to your sailing instructions furnished by M.S.T.S., first with respect to the

(Deposition of Robert Craig.)

first voyage, did those sailing instructions give you a port of destination?      A. They did.

“Q. And what was that port of destination on the first voyage?      A. Okinawa.

“Q. And with respect to the second voyage, did those orders, those written orders, give you a port of destination or discharge?      A. Yes.

“Q. What was that port?

“A. Yokohama. [168]

“Q. Now, Mr. Ferguson mentioned control points or reference points in the sailing instructions. What were those for?

“A. Those were for reference if I received any instructions during the voyage from the M.S.T.S. or the Naval authorities.

“Q. And when you actually received instructions to divert were those instructions couched in terms referring to one of those control points?

“A. They were couched in terms referring to one of those points, yes.

“Q. Now, is it your testimony that you don't remember whether there was any congestion in the port at Moji, or there was, in fact, no congestion, to the best of your recollection?

“A. To the best of my recollection there was no actual congestion in the Port of Moji. I did see quite a lot of ships pass through the straits, but, as regards the actual port, I didn't see any congestion.

“Q. Now, with respect to the voyage summary that you identified for Mr. Ferguson, does this pur-

(Deposition of Robert Craig.)

port to be an abstract from the log; is that what it is?

“A. This is an abstract from the log, yes.

“Q. And it is no more correct than the log?

“A. No. It is from the log; information obtained [169] from the log.

“Q. That is, the log is the source of that information? A. Yes.

“Q. That is, whatever the log shows is correct?

“A. Yes, that is right.

“Q. If there is any variance between this and the log, it is the log that is accurate?

“A. Yes.”

Mr. Staring: Let the record show the paper counsel is referring to is Respondent's Exhibit No. A-1.

Mr. Knudsen (Reading):

“Q. Do you remember whether or not you delivered the manifest to the M.S.T.S. representative at the port of discharge?

“A. All papers that I was given, on leaving the port of loading, I delivered to the M.S.T.S. representative at the port of discharge.”

Mr. Knudsen: If the Court please, we now have the manifests, and libelant would like to offer them in evidence. Libelant's 19 would be the Voyage No. 1 manifest.

The Court: Will you pause for a moment?

I asked the Clerk to allocate the names and [170] marks identifying them. Mr. Clerk, what number is that?

(Deposition of Robert Craig.)

The Clerk: Libelant's Exhibit 19, your Honor.

(Voyage No. 1 Manifest marked Libelant's Exhibit No. 19 for identification.)

The Court: What is its nature?

Mr. Knudsen: The Voyage 1 manifest.

The Court: Voyage 1 is not the subject of this litigation, is it?

Mr. Knudsen: No, your Honor, but I am using it for comparative purposes.

Libelant's No. 10 is the Voyage 2 manifest.

The Court: Mr. Clerk, have you given this exhibit a number?

The Clerk: I am now giving it a number, your Honor. It is Libelant's Exhibit 20.

(Voyage No. 2 Manifest marked Libelant's Exhibit No. 20 for identification.)

The Court: Do you wish to make your statement now as to what it is, Libelant's 20?

Mr. Knudsen: Libelant's 20, if the Court please, is the Voyage 2 manifest.

Do you have any objection—— [171]

Mr. Staring: I have no objection to their being admitted in evidence.

The Court: Do you offer both of them, Mr. Knudsen?

Mr. Knudsen: Yes, your Honor.

The Court: Each of them, 19 and 20, is and are admitted.

(Deposition of Robert Craig.)

(Libelant's Exhibits Nos. 19 and 20 received in evidence.)

The Court: Proceed with the deposition.

Mr. Knudsen (Reading):

"Well, let me ask Mr. Ferguson, on the record if you will tell me the amount of the cargo that was shipped on each voyage, I think we can stipulate that that was shipped. The amount shown by the manifests we do not know.

"Mr. Ferguson: We do not care. Whatever it says, I am willing to give you a statement of that and stipulate as to the amount. I think he has already stated that there were 9,000 some tons.

"The Witness: According to my recollection, I think I wrote a letter concerning that second voyage, and I remember those figures, 9,385. [172]

"Mr. Knudsen: Gross tons.

"Mr. Ferguson: On the first or second voyages?

"The Witness: I can't remember the figures on the first voyage. It ran about 8500 tons.

"Mr. Knudsen: I would like to know what the tonnage was on the first voyage, for the record.

"Mr. Ferguson: Well, how many pounds—you are satisfied with the pounds, are you?

"Mr. Knudsen: For the present purposes I am.

"Mr. Ferguson: O.K. 19,154,419 pounds. The cubic footage is 303,999. That is what it shows.

"The Witness: That is what it shows there, yes.

"Mr. Ferguson: Pretty close to 9,000 tons.



(Deposition of Robert Craig.)

“The Witness: That was the first, was it, the Okinawa cargo, wasn’t it?”

“Mr. Ferguson: No. That was the last one, the first half of November, 1950.

“Mr. Knudsen: That is Voyage 2. Do you have it for Voyage 1?”

“Mr. Ferguson: I do not know if I have it for Voyage 1. I will see if I can find it.

“Mr. Knudsen: All right. One further question:

“Q. Captain, do you recall the approximate tonnage that you carried on Voyage No. 1 under the charter? [173]

“A. A very rough figure would be 8500 tons.”

Mr. Knudsen: That is all.

(Whereupon, on recross-examination, Mr. Staring read the questions and Mr. Long the answers, as follows:)

#### Recross-Examination

Mr. Staring (Reading):

“Q. Now, when you were given a port of destination when you started out, both on Voyage 1 and Voyage 2, you were given a code name, weren’t you?”

“A. No, I was given a port of destination because I had to clear customs and declare it to customs.

“Q. Did you get it in a code, or did you get a name? A. I got the name.

“Q. You got the name? A. Yes.

“Q. But it was subject to your instructions? I

(Deposition of Robert Craig.)

mean you also got instructions that you would receive word as to your further course when you got to a certain point, didn't you?

"A. No, I can't recall getting those instructions that I would definitely receive anything.

"Q. Well, you have described it before in your former testimony, haven't you, correctly? [174]

"A. Yes; that I understood, just as in the case of any other charter, they can change their minds.

"Q. Now, we gave you the totals on the Army manifest for the Yokohama voyage, which was the second voyage. Now, will you give him the number of pounds on the first voyage?

"A. 17,298,010 pounds."

Mr. Staring: That is all.

The Court: Does the libelant offer this deposition as part of the libelant's case in chief?

Mr. Knudsen: Yes, your Honor.

The Court: The deposition as read is now received as part of the libelant's case in chief with like effect as if the witness Robert Craig were personally present and was sworn and testified from the witness stand as in the deposition reflected.

Mr. Knudsen: I will call Capt. Clarke.

The Court: Capt. Clarke, please come forward and be sworn as a witness. [175]

## CAPT. JOHN ST. CLAIR CLARKE

called as a witness by and on behalf of libellant, having been first duly sworn, was examined and testified as follows:

## Direct Examination

By Mr. Knudsen:

Q. Captain, will you please state your full name and address?

A. John St. Clair Clarke, 5538 Olympic Street, Vancouver, B. C.

Q. And what is your occupation?

A. I am the President and General Manager of Western Canada Steamship Company, Ltd.

Q. How long have you been with that company?

A. Since July, 1948.

Q. And during the last six months of 1950 and the first six months of 1951, what was your position with that company?

A. I was the operating manager of the company at that time.

Q. What were your duties as operating manager?

A. To see that the ships were kept moving. By that, I mean the crews were aboard and the ships were kept under proper repair so that we then reported to our traffic people [176] the movements of the ships so they could have the next cargo ready for us.

Q. And were you subsequently made general manager of the company?

A. I was made general manager in March, 1951.

(Testimony of Capt. John St. Clair Clarke.)

Q. And what generally, were your duties in that capacity?

A. The general operations of the company, over all, as general manager in charge of all departments.

Q. Will you briefly relate your experience prior to your employment with Western Canada Steamship Company in operating cargo vessels?

A. Having been at sea for twenty years, I came ashore as a marine superintendent in October, 1944, for the Park Steamship Company, which operated Canadian Government ships during that time, during the war, and I stayed with them—was promoted to their operating manager in 1946 when I stayed with them until the company more or less disintegrated. All ships were sold to private interests, and it was in July, 1948, I joined Western Canada Steamship Company.

The Court: Will you give the names of some of those Park Steamship Company ships?

The Witness: Your Honor, there were 300 of them.

The Court: Any of them you can think of?

The Witness: Atwater Park, Princeton [177] Park——

The Court: Did all have the name “Park” as part of the name?

The Witness: Yes, sir.

The Court: You may proceed.

Q. (By Mr. Knudsen): Are you a licensed master, Captain? A. I am.

Q. And is that any ocean, any tonnage?

(Testimony of Capt. John St. Clair Clarke.)

A. Any ocean, any tonnage of merchant ships.

Q. When did you receive your license, do you recall?      A. 1932.

Q. And have you actually sailed as a master?

A. I was master for one year during the war until I came ashore in October, 1944.

Q. Have you sailed as first officer?

A. I was chief officer or first officer all during the war years from 1943 until I became master in—in 1944.

Q. And on what type of vessels?

A. Mostly on passenger vessels carrying troops during the war and then on the cargo ship for just over a year as master.

Q. Have you any experience in the North Pacific trade between the West Coast of the United States and Canada and Japan and Okinawa and oriental ports?

A. Prior to the war I was twelve years on [178] the oriental service of the Canadian Pacific steamships.

The Court: At this point we will take a recess of about ten minutes.

(Recess.)

The Court: You may proceed.

Q. (By Mr. Knudsen): In what capacity did you serve aboard the vessels in your twelve years' experience in the North Pacific trade for the Canadian Pacific Steamship Company?

A. I started in as a cadet and went all the grades



(Testimony of Capt. John St. Clair Clarke.)

of officer up to and including the chief officer on those ships.

Q. Are you an experienced navigator?

A. Yes, sir.

Mr. Knudsen: Will you mark this for identification?

The Clerk: Libelant's Exhibit 21.

(Chart of the North Pacific Ocean marked Libelant's Exhibit No. 21 for identification.)

The Court: Are you indicating that this is an official chart?

Mr. Knudsen: That is right, your Honor.

The Court: You are sure it is an official chart?

Mr. Knudsen: Yes, your Honor. [179]

It was gotten out by a governmental agency, and it probably has an identifying official mark.

The Court: I want to say to counsel on both sides for their information and consideration that I want to hear the words reflecting evidence in this case rather than to see pictures of them.

Proceed.

Q. (By Mr. Knudsen): Captain, handing you what has been marked for identification as Libelant's Exhibit 21, can you identify that chart?

A. This is a general chart of the North Pacific Ocean.

Q. Is it an official publication of the Hydrographic Office of the United States Navy?

A. It is an official Hydrographic Chart No. 9790.

The Court: Of what government?

(Testimony of Capt. John St. Clair Clarke.)

The Witness: Hydrographic Office of the United States Navy, your Honor.

The Court: What number did the Clerk give this?

The Clerk: Libelant's No. 21, your Honor.

Q. (By Mr. Knudsen): On the chart, marked in black ink, is a course from Seattle to Okinawa and return. Can you tell me what that course represents? [180]

A. This is the course of the Lake Sicamous on Voyage 1 under the charter. The positions on it I have checked from the log books that I saw yesterday.

Q. And what route does that represent?

A. That route is what we refer to as the composite Great Circle route sailing from Seattle to Japan.

The Court: You mean sailing route?

The Witness: Yes, your Honor.

The Court: From Seattle to where?

The Witness: Japan.

The Court: You may inquire.

Q. (By Mr. Knudsen): On that chart marked in red ink is another route from Seattle or Bangor, Washington, to Moji, Kure and Kobe, Japan, and return to Seattle. Can you tell me what that route represents?

A. That route is the second voyage of the Lake Sicamous. and the positions again were checked from the log books that were presented.

Mr. Knudsen: If the Court please, I offer this

(Testimony of Capt. John St. Clair Clarke.)

Libelant's No. 21 in evidence as illustrative of the actual routes of the vessel as taken from the log book positions.

Mr. Staring: I have no objection to its being received in evidence. [181]

The Court: It is admitted.

(Libelant's Exhibit No. 21 received in evidence.)

The Court: You may proceed.

Q. (By Mr. Knudsen): With reference to the route shown for the second voyage, is that route the normal commercial route from Seattle to Japan?

A. It is not a normal route for commercial use at all, sir.

The Court: Would you read the answer?

(Whereupon the last answer is read by the court reporter.)

The Court: You may inquire of him now.

Q. (By Mr. Knudsen): Would you compare that route with the composite Great Circle route as far as distance is concerned?

The Court: Excuse the interruption, but I thought you asked about the Great Circle route, and the last answer refers to that one.

Will you read the last three answers in the record?

(Whereupon the last three questions and answers are read by the court reporter.) [182]

(Testimony of Capt. John St. Clair Clarke.)

Mr. Knudsen: I think I can clear this up by a question.

The Court: The word "normal" distinguishes this from some other or some other from this. Is that what you mean by the word "normal"?

Mr. Knudsen: Yes. There are customary commercial routes, and on this second voyage the vessel did not take one; on the first voyage, the vessel did. The Captain identified the route on the first voyage as being a composite Great Circle route. On the second one, he has identified it as being a route that is not a customary or normal commercial route.

Q. (By Mr. Knudsen): Will you explain generally the difference in course taken on the second voyage as between the first voyage? Was it more southerly, etc.?

A. The courses taken on the first voyage are the shortest and most expeditious courses to take both to and from Japan and from Seattle. The other route is much longer and is not used commercially because there is nothing to be gained. In fact, you lose, doing that extra distance, and from this particular route, the extra distance going on the Southern route, is approximately 1,000 miles longer.

Q. By the "Southern route," you mean the one in red? [183]

A. The one in red.

Q. And that was the route on the second voyage?

A. That is correct.

Q. And that would be an extra 1,000 miles to Yokohama?

A. An extra 1,000 miles to Yokohama.

(Testimony of Capt. John St. Clair Clarke.)

The Court: From Seattle, is that right?

The Witness: From Seattle, yes, your Honor.

Q. (By Mr. Knudsen): Captain, to have it absolutely clear for the record, what is the customary and most expeditious commercial route from Puget Sound to Japan?

A. It is the composite Great Circle route.

Q. And from Japan to Puget Sound?

A. A similar route, known as a composite Great Circle route, also.

The Court: May I see that exhibit?

(Whereupon Libelant's Exhibit No. 21 is handed to the Court.)

The Court: Do you intend that the courses marked on this map in black ink, Capt. Clarke, represent those routes taken by the vessel on Voyage 1?

The Witness: Yes, your Honor.

The Court: And that the routes shown or delineated on this exhibit in red ink are those taken [184] on the second voyage, each voyage being of the vessel *Lake Sicamous*?

The Witness: Yes, your Honor.

The Clerk: Libelant's Exhibit No. 22.

(U. S. Navy Hydrographic Chart No. 1262 marked Libelant's Exhibit No. 22 for identification.)

Q. (By Mr. Knudsen): Captain, handing you what has been marked for identification as Libelant's Exhibit 22, can you identify that chart?



(Testimony of Capt. John St. Clair Clarke.)

A. This is a United States Navy Hydrographic Chart showing——

The Court: What is the number?

The Witness: Chart No. 1262.

A. (Continued): It is a track chart of the world showing the selected tracks with distances from place to place in nautical miles.

Q. Now, does that show what are known as the customary commercial routes?

A. There is a note on the chart which says: "The tracks shown on this chart are based on the best navigable routes taking into consideration weather, currents, etc." The tracks shown are the Great circle, rhumb or composite—— [185]

The Court: What is the word——

The Witness: Rhumb—r-h-u-m-b.

The Court: What does "rhumb" mean?

The Witness: A rhumb line is a straight line where you cross all meridians of longitude at the same angle. It is a straight line, not taking into consideration the curvature of the earth.

Q. (By Mr. Knudsen): Does that chart show the composite Great Circle from Seattle to Yokohama and from Yokohama to Seattle?

A. It does.

Q. Does it show the official distance?

A. It shows a distance—Seattle to Yokahama—of 4,254 miles.

The Court: I wonder if he is reading the contents of a document not in evidence.

Mr. Knudsen: I didn't know how far to go in

(Testimony of Capt. John St. Clair Clarke.)

identification. I will offer it in evidence if the Court please.

Mr. Staring: I have no objection to its being received.

The Court: Admitted.

(Libelant's Exhibit No. 22 received in evidence.)

The Court: Now you can ask him to read anything [186] on it. 4,254 miles, is that it, nautical miles?

The Witness: Yes, your Honor, Seattle to Yokohama.

The Court: You may proceed.

Q. (By Mr. Knudsen): Does it give the distance of the composite Great Circle route returning from Yokahama to Seattle?

A. It shows that, also.

Q. What is that distance?

A. Yokahama to Seattle—4,276 miles.

Q. Does that chart show any route from Seattle to any port in Japan and which approximates the route taken by the SS Lake Sicamous on her second voyage under this charter?

A. None whatsoever.

Q. Let me preface my question by saying that the log distances for the Lake Sicamous start at Port Angeles. Do you know the distance from Seattle to Port Angeles?

A. It is 60 miles, 60 nautical miles.

Mr. Knudsen: I believe that is all with that exhibit.

(Testimony of Capt. John St. Clair Clarke.)

The Court: May I have the last two questions and answers?

(Whereupon the last two questions and answers are read by the court reporter.)

Mr. Knudsen: Will you hand the witness [187] Libelant's No. 20, please?

(Whereupon Libelant's Exhibit No. 20 is handed to the witness.)

The Court: You may proceed.

Q. (By Mr. Knudsen): Captain, handing you Libelant's Exhibit No. 20, which is the manifest for Voyage 2 under the charter, have you reviewed that manifest so that you know generally what cargo was aboard the vessel on that voyage?

A. I saw that manifest this morning and have looked through it, yes.

Q. Now, Captain, in accordance with ordinary commercial practice, using reasonable dispatch, how long would it reasonably take to load that cargo aboard the vessel at Bangor, forward the vessel to Yokahama, Japan, discharge the vessel at Yokahama, and return the vessel to Seattle?

Mr. Staring: I object, your Honor. No foundation has been laid which would allow this witness to testify from using a cargo manifest to all of that information which counsel has asked by merely perusing the cold paper.

The Court: Read the question.

(Testimony of Capt. John St. Clair Clarke.)

(Whereupon the last question is read by the court reporter.)

The Court: In view of the objection, the [188] interrogating counsel is advised that the Court will postpone the opportunity to the witness to make answer to that question unless and until you first show the proper qualifications of the witness to answer it.

In that connection, I advise counsel that it would be proper to ask him a question as to his experience that you believe enters into his qualifications to answer the question.

Mr. Knudsen: Thank you, your Honor.

Q. (By Mr. Knudsen): Capt. Clarke, would you detail your experience better as a master or officer of a vessel or as an executive of a shipping company in loading cargo vessels with cargo?

The Court: How about navigating them?

Mr. Knudsen: I will take it all at once then.

Q. (By Mr. Knudsen, continued): Loading vessels, navigating vessels across the North Pacific between Puget Sound and Japanese ports, and in discharging vessels?

A. Well, starting out as a cadet, I had four years' apprenticeship on the Canadian Pacific Steamship vessels going to the Orient where, as a boy, I learned the rudiments of seamanship and navigation. Then, having secured my second mate's certificate, I was on cargo vessels for two years as [189] a junior officer getting in sufficient time

(Testimony of Capt. John St. Clair Clarke.)

for my next grade of certificate, where we loaded and discharged general cargoes. Then I was in an oil tanker, where I obtained sufficient sea time to obtain my master's certificate, and I obtained that certificate in 1932.

I then returned to the Canadian Pacific Steamship Company as a junior officer where, under senior officers, we loaded our general cargoes to and from the Orient for a matter of from 1932 until the outbreak of war in 1939. Then we carried troops of all nationalities until early in 1943. In carrying these troops, we also carried on each voyage somewhere between 4,000 and 5,000 tons of military cargoes to the different destinations where we were going.

Then when I left the passenger vessel—when it left me—I then joined the cargo ships of the Park Steamship Company as master, where we were taking general cargoes to and from Australia, and that was for a matter of over a year, when I came into the offices of Park Steamship Company in October, 1944.

As the marine superintendent of that company, I was naturally interested in the repairs and maintenance of our vessels and the cargoes that were ordered, although not handled, by myself. All the papers would go through our offices and we had in that company a good running record of all the cargoes that were carried, with their length of [190] loading time and such like.

The Court: Did you have any experience in that



(Testimony of Capt. John St. Clair Clarke.)

connection, the navigation of vessels, loading and discharging of cargoes, and the navigation of commercial vessels between Seattle and Yokahama and Kure?

The Witness: Prior to the war, your Honor, I was an officer loading normal cargo to the Orient and was a navigating officer navigating the vessels to and from.

The Court: What oriental ports?

The Witness: Yokohama, Kobe, Nagasaki, Hong Kong and Manila.

Q. (By Mr. Knudsen): Now, since you have joined Western Canada Steamship Company, what duties have you had relative to the loading and discharging of ships and supervising their movements generally in the loading and discharging when it has not been handled by yourself in person?

A. A staff with a marine superintendent who worked for me did the actual loading of the vessels and would report. I did not personally load those vessels.

Q. You have general supervision over all the activities of the company relating to the vessels, though, is that correct? [191]

A. That is correct.

Q. What are the duties of a first officer aboard a vessel?

A. His duties are general upkeep. That is the maintenance of the vessel. He is responsible for the discipline of the crew, and he is also the man who is responsible for the loading and discharging of

(Testimony of Capt. John St. Clair Clarke.)

his ship, say where the cargo goes aboard, keeping the records, and seeing it is properly discharged.

Q. And how long have you served as a first officer of a vessel?      A. A matter of four years.

Q. Specifically, are you familiar with the loading and discharging and navigation of vessels of the same type as the SS Lake Sicamous?

A. I beg your pardon?

The Court: Read it.

(Whereupon the last question is read by the Court reporter.)

A. The vessel I had command of was that type.

The Court: I think you should answer yes or no. Answer yes or no.

The Witness: Then I will say, no.

The Court: Read the question again.

(Whereupon the last question is again read by [192] the court reporter.)

The Court: Your answer still stands?

The Witness: Your Honor, I am not exactly confused. I have had command of a vessel of that type.

The Court: Well, you know the meaning of words. I can tell that from your facility in speech. The questions is: "Are you familiar, etc.?"

Mr. Knudsen: I will withdraw the question and ask another.

Q. (By Mr. Knudsen): Have you had command of a vessel of the same type as the SS Lake

(Testimony of Capt. John St. Clair Clarke.)

Sicamous?           A. Yes.

Q. And as master of that vessel were you completely in charge—that is to say you had the final responsibility regarding the loading of the vessel, the discharging of the vessel and her navigation?

A. Yes.

Q. You supervised all those activities?

A. Yes.

The Court: It would be proper to ask him what he knows about the subject of your inquiry finally to be made and to which objection was previously made. [193]

Q. (By Mr. Knudsen): Are you familiar with the time that it would take to load general cargo or ammunition of 9,000 tons aboard a vessel such as the SS Lake Sicamous?

A. Yes. Those records have been through my office.

Q. Are you familiar with the normal cruising speed of such vessels?           A. Yes.

Q. Are you familiar with the time that would reasonably be anticipated in navigating one of such vessels from Seattle to Yokohama and return?           A. Yes, I would.

Q. How long would it reasonably take to load this cargo of approximately 9,000 tons of ammunition aboard the SS Lake Sicamous at Bangor, Washington?

Mr. Staring: I will object to that question. It is not shown the witness has any familiarity with

(Testimony of Capt. John St. Clair Clarke.)

the facilities at Bangor, Washington, or the problems of locating that particular cargo.

The Court: The objection is sustained with leave to inquire.

Q. (By Mr. Knudsen): How long would reasonably be required, Captain, to load 9,000—

The Court: May I interrupt you, Mr. Knudsen? If you wish to do so, it would be appropriate for [194] you to inquire by proper form of question as to whether he has made an examination of what occurred at Bangor in reference to the loading of this vessel and with respect to the method used there and as to the amount of time consumed and inquiries of that sort.

Q. (By Mr. Knudsen): Have you made any investigation into the conditions and circumstances of the loading of the vessel at Bangor, Captain?

A. At the end of the voyage Capt. Craig reported to our office, explaining what had taken place.

The Court: All you have to say in answer to that question is yes or no, and if counsel wishes any further details, he is competent to ask for them. Answer the question yes or no.

The Witness: The answer is no, sir.

The Court: Pardon?

The Witness: I said no, sir.

The Court: Ask him another question if you will.

Q. (By Mr. Knudsen): How much time, Captain, would it reasonably take to load approximately

(Testimony of Capt. John St. Clair Clarke.)

9,000 tons of ammunition aboard a vessel such as the SS Lake Sicamous under normal port conditions with adequate loading facilities? [195]

The Court: If you know. Are you willing to attach that?

Mr. Knudsen: Yes.

Q. (By Mr. Knudsen): What is the reasonable time of such——

Mr. Staring: That is immaterial. It does not concern any issue in this case.

The Court: The objection is overruled. The Court regards this witness as the libelant in stating the answer to a question like that.

A. The records in our office show——

The Court: No, not your records. Read the question.

(Whereupon the question was read by the court reporter as follows: “Q. How much time, Captain, would it reasonably take to load approximately 9,000 tons of ammunition aboard a vessel such as the SS Lake Sicamous under normal port conditions with adequate loading facilities?”)

The Court: Mr. Knudsen also applied to the question the condition applied by the Court.

Mr. Knudsen: That is, if you know, Captain?

A. 12 to 14 days.

Q. (By Mr. Knudsen): How much time would it reasonably take to [196] navigate a vessel such as the SS Lake Sicamous with approximately 9,000



(Testimony of Capt. John St. Clair Clarke.)

tons of cargo aboard by the composite Great Circle route from Bangor, Washington, to Yokohama?

A. 18 to 20 days.

Q. How much time would it reasonably take to discharge a vessel such as the SS Lake Sicamous of approximately 9,000 tons of ammunition at a port containing customary and adequate discharge facilities?

Mr. Staring: I object, your Honor. That is irrelevant and immaterial, too. There is evidence in this case as to the actual ports at which this cargo was discharged. Counsel's own witness has testified that he had orders during the voyage requiring him to deviate upon receiving further instructions and that the voyage was not actually to Yokohama. Now, this witness has not been qualified as to the ports of Moji and Kure, and particularly with the facilities available there at the time, or even with the facilities available at Yokohama, and that is really what we are concerned with.

The Court: The objection is overruled. Do you remember the question?

The Witness: Yes, your Honor.

The Court: Answer it.

A. Similar to loading—12 to 14 days. [197]

Q. And how much time would it reasonably take to navigate the vessel from Yokohama to Seattle in ballast via the composite Great Circle route?

A. 16 to 18 days.

Q. How much time then, Captain, would the

(Testimony of Capt. John St. Clair Clarke.)

whole procedure, loading, forwarding, discharging, and returning, take?

Mr. Staring: May it be shown that my objection runs to this whole line of questioning?

The Court: It is overruled.

A. A maximum of 66 days.

Q. (By Mr. Knudsen): Do you, as president of a shipping company, in the course of your business have to make estimates of time that would reasonably be anticipated for a vessel to load and discharge cargo and complete a specified voyage?

A. Yes.

Q. And is that a part of your duties as president of the company? A. It is.

Q. And if you were advised that one of your vessels, such as the SS Lake Sicamous, were going to take on approximately a full cargo of ammunition and proceed to Japan and discharge and return, what would you estimate the time that that process would take?

A. The time I gave you—the maximum of 66 days. [198]

The Court: How many days normally would going and coming, both of them together, would such a voyage entail, if you know?

The Witness: Thirty-eight days going on the ocean.

The Court: I mean the entire——

The Witness: Sixty-six days, your Honor.

The Court: Is the round trip?

The Witness: Yes, your Honor.

The Court: You may proceed.

(Testimony of Capt. John St. Clair Clarke.)

Q. (By Mr. Knudsen): That includes loading and discharging?

A. That includes loading and discharging.

Q. Captain, does the company require reports from its masters of any unusual delay in the course of a voyage?

A. The masters write letters to the office, and when they come back in port we have written reports from the masters as well as an interview with them.

Q. And are those reports, written reports, received by you in the ordinary course of business?

A. They are received by me.

Q. That is a regular part of the administrative routine of the company, is that correct?

A. That is correct.

The Clerk: Libelant's Exhibit No. 23. [199]

(Capt. Craig's report marked Libelant's Exhibit No. 23 for identification.)

Mr. Knudsen: That might be referred to your Honor, as Capt. Craig's report.

The Court: Now, it was the Court's intention to ask counsel yesterday to disclose to opposing counsel yesterday every exhibit that they intended to have anything to do with in this trial.

Mr. Knudsen: Well, I am sorry, your Honor. I did not understand the import of the Court's request. I thought you requested us to agree on those matters that we previously discussed, matters taken from Government records, and that sort of thing.

(Testimony of Capt. John St. Clair Clarke.)

The Court: I meant every exhibit you ever expected to use in this trial.

Mr. Knudsen: This is the last one we have, your Honor, unless possibly on rebuttal.

The Court: Well, if you are certain they will be used on rebuttal, I wish you would bring them out.

Mr. Knudsen: Your Honor, it depends on what witnesses the Government offers, and I will take those up with counsel in advance.

The Court: I think the Court's statement contains sufficient expression of condition. [200] Proceed.

Q. (By Mr. Knudsen): Captain, handing you what has been marked for identification as Libelant's Exhibit No. 23, can you identify that document?

A. That is a report from Capt. Craig to myself with reference to the M.S.T.S. charter.

Q. And was that received by you in the regular course of business?

A. That was received by me in the normal course of our business.

Mr. Knudsen: I offer Libelant's 23 in evidence.

Mr. Staring: I object, your Honor, not on the ground that it is hearsay as to what Capt. Craig knew of his own knowledge but that it is full of hearsay and conjecture, as is apparent on its face, statements showing no indication of the sources.

The Court: In respect to the termination of the voyage, when was the report made, if you know?

(Testimony of Capt. John St. Clair Clarke.)

The Witness: The report was made on December 11, 1951, to me, sir.

The Court: That is how many months after the voyage was terminated, if you know?

The Witness: Nine months.

The Court: The objection is sustained.

Mr. Knudsen: That is all I have, Captain. [201]

### Cross-Examination

By Mr. Staring:

Q. Captain, in direct examination the term "commercial" or "commercial voyage" I believe was used. Now, having regard for the voyages that were made by the Lake Sicamous under this charter party carrying ammunition to military ports, are they what you would call commercial voyages, voyages in commercial service, or commercial voyages? I am trying to get at the way in which you have used the term "commercial."

A. The word "commercial" is normal operations for a company in our business. When that vessel was chartered, we were given no information from the M.S.T.S. on where the ship would go or how.

Q. Is that your answer? I don't think it is completely responsive.

The Court: Ask him another question.

Q. (By Mr. Staring): What I am trying to get at, Captain, is whether, when you use the term "commercial" you apply that term to the voyages of the Lake Sicamous, is that what you call a com-



(Testimony of Capt. John St. Clair Clarke.)

mercial voyage? A. Yes.

Q. Let me ask you are you acquainted with the [202] arrangements and facilities at the naval ammunition depot at Bangor, Washington?

A. No, I am not.

Q. Captain, during the war I believe you said you sailed up until a time in 1944, is that correct?

A. That is correct.

Q. Can you tell us from what American or Canadian ports you sailed during the war?

A. From 1943 I sailed from Canadian West Coast ports to Australia and New Zealand. Prior to that I was mainly on the Atlantic Ocean and touched American East Coast ports, across to England and the Continent, and Canadian ports, also.

Q. You were, I presume, carrying war supplies largely, were you not, during that period?

A. That is correct.

Q. You stated I believe you had at times been on troop ships? A. Yes.

Q. Can you tell us how much of that service you have described was on troop ships?

A. When the war broke out in September, 1939, our vessel was immediately taken over.

The Court: I do not think that is an answer to the question. It is a very simple question. If [203] you know it, give it.

Read the question.

(Whereupon the last question is read by the court reporter as follows: "Can you tell us

(Testimony of Capt. John St. Clair Clarke.)

how much of that service you have described was on troop ships?")

A. Four years.

Q. (By Mr. Staring): And which years were they? A. From 1939 until 1943.

Q. Then I take it from 1943 to 1944 your service was not on troop ships and was on cargo ships?

A. That is correct.

Q. Now, during that year you were sailing from the West Coast to ports of Australia and New Zealand, is that correct? A. That is correct.

Q. Would you name those ports in Australia and New Zealand?

A. Sydney and Melbourne, Australia, and Auckland, Wellington, and Littleton, New Zealand.

Q. Captain, did you ever experience delays in those ports that you have named in Australia and New Zealand in being discharged?

A. No, we did not. [204]

Q. You did not? A. No.

Q. Captain, how many ships does Western Canada Steamship Company operate at the present time?

A. At the present time we operate three vessels.

The Court: In 1950 how many did you operate or have under charter?

The Witness: In 1950, your Honor, we owned twelve vessels and we had four under charter.

The Court: Of those that you owned—or in addition?

(Testimony of Capt. John St. Clair Clarke.)

The Witness: In addition to the ones that we owned.

Q. (By Mr. Staring): And in what service or services were your vessels in 1950?

A. General trading around the world.

Q. Is that still the situation with respect to the vessels you now operate?

A. That is still the situation.

Q. Your vessels put in at oriental ports, Japan particularly? A. They do.

Q. Have you yourself ever put into ports in Japan?

A. Have put into Yokahama, Kobe and Nagasaki.

Q. Have you ever put into Moji? [205]

A. Never.

Q. Ever into Kure? A. No.

Q. Into Kobe? A. In Kobe, yes.

Q. You have no knowledge then what facilities are available in ports of Moji and Misuru?

A. No, I have not.

Q. Captain, has your company ever chartered other vessels besides the Lake Sicamous to the United States Navy or the United States Government? A. No.

Q. In connection with the operation of the Lake Sicamous for the Military Sea Transportation Service, did you yourself have any direct contact with the Military Sea Transportation Service or with United States Naval authorities? A. No.

Q. Do you know, Captain, what authority issued

(Testimony of Capt. John St. Clair Clarke.)

the sailing instructions for vessels chartered to the Military Sea Transportation Service for service to the Far East during the Korean hostilities?

A. The Military Sea Transport Service would give the masters their instructions.

Q. Do you know whether they actually formulated those instructions or whether they were just a conduit for them? [206]

A. I would not know.

Q. Do you know anything about the functions of the Naval Control of Shipping Office?

A. Yes.

Q. Do you know whether that office has anything to do with the instructions issued ships chartered to the Military Sea Transportation Service?

A. No, I do not.

Q. Do you know what factors were taken into account in making up the sailing orders for the Lake Sicamous on her second voyage?

A. No, I do not.

Q. Do you know whether weather and weather conditions in the North Pacific were taken into account?

A. They would not affect—in the month of November—that voyage.

Q. Do you know of the existence of any operational zones or areas in which ships were forbidden to enter at various times during 1950 or 1951?

A. No.

Q. Would the draft of the vessel and its load line affect the route prescribed for it?

(Testimony of Capt. John St. Clair Clarke.)

A. That would have no effect at all.

Q. Wouldn't the vessel have to observe the requirements of the International Load Line Convention with respect [207] to the zones in which she sailed?

A. Yes.

Q. Captain, wouldn't you say that as to the weather in the North Pacific and along the composite Great Circle route about which you have testified it involves a greater risk of storms in the period from November through February than it does in the period of August and September?

A. The month of November is one of the best months for crossing the North Pacific in the composite Great Circle route.

Q. How about the month of December?

A. The month of December is not as good but very good.

The Court: The Court will be at recess until two o'clock.

(At 12:00 o'clock noon, Thursday, August 4, 1955, proceedings recessed until 2:00 o'clock p.m., Thursday, August 4, 1955.)

August 4, 1955—2:00 P.M.

The Court: I wish to proceed with the case on trial.

Mr. Staring: I have no further questions. [208]

The Court: Do you have any further questions of this witness?

Mr. Knudsen: Yes.



(Testimony of Capt. John St. Clair Clarke.)

Redirect Examination

By Mr. Knudsen:

Q. Captain, with reference to this charter party that is involved in this action, I will ask you as far as Western Canada Steamship Company was concerned, was it an ordinary commercial transaction?

A. It was.

Q. Based upon your experience as operator of vessels sailing by the Great Circle composite route from Puget Sound to Japanese ports and return, and based upon your experience as a shipmaster navigating such vessels, is that both a winter and a summer route?           A. It is.

Mr. Knudsen: That is all I have.

Mr. Staring: No further questions.

The Court: You may step down.

(Witness excused.)

The Court: Call the next witness.

Mr. Knudsen: If the Court please, libelant has no further witnesses, but I would like to offer into [209] evidence certain admissions made by the respondent.

The Court: May I see the file?

(Whereupon the Court file is handed to the Court.)

Mr. Knudsen): Also the answers to certain interrogatories which were propounded by libelant.

The Court: Would they appear in the files and records of the case?

Mr. Knudsen: Yes, your Honor, on February 15, 1955, the request was filed, the first request.

The Court: The Request for Admissions 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20, are those the ones you refer to?

Mr. Knudsen: Yes, and I am concerned at this time only with No. 3.

The Court: Appearing on the first page?

Mr. Knudsen: And the answers to these requests were served upon us on March 7, 1955, and I presume filed the same day.

The Court (Examining file): Respondent's Answer to Libelant's Request for Admission of Facts and Genuineness of Documents filed March 7, 1955.

Mr. Staring, is that the answer to 3?

Mr. Staring: Yes, your Honor. That is the answer to the request that was made on February 15.

The Court: Well, you may proceed with respect [210] to that, Mr. Knudsen.

Mr. Knudsen: Question 3 in Libelant's Request for Admission of Facts reads as follows:

“That M.S.T. 197 and all amendments, modifications and addenda thereto were prepared by respondent on its own forms and submitted to libelant for signature.”

The answer by respondent is as follows:

“Respondent admits Statement No. 3.”

Now, if the Court please, libelant made a supplemental request for admission of facts and of gen-

uineness of documents which was filed on February 26, 1955.

The Court: Consisting of three differently stated requests?

Mr. Knudsen: That is correct, your Honor.

The Court: What and where are the answers to that?

Mr. Knudsen: The answer was served on March 7, 1955, and I assume filed the same day.

The Court: I have found it. You may proceed.

Mr. Knudsen: I am concerned, if the Court please, with No. 1 of the supplemental request reading as follows:

“That M.S.T. 197, when negotiated in July, [211] 1950, contemplated two round voyages from a port or ports on the West Coast of the United States to the Far East.”

The answer of respondent reads as follows:

“Answering unto Statement No. 1, respondent states that M.S.T. 197, when negotiated in July, 1950, contemplated the delivery of munitions of war by the SS Lake Sicamous to the Armed Forces of the United States and Allied Nations in the theatre of war during the existing Korean War at such ports and at such times as directed by the Allied officials in charge, and that upon the expiration of the first voyage, with knowledge of both parties to the charter of conditions existing in the theatre of war, a second voyage was made with consent of all concerned. Two voyages from a port or ports on the West Coast of the United States to the Far East

under such circumstances were contemplated by the parties.”

Now, if the Court please, this is an argumentative answer, and I believe that, legally speaking, this is simply an admission of the request as stated. I am not offering all this argument that is contained in this answer in evidence. I only want the admission [212] in evidence that two voyages from a port or ports on the West Coast of the United States to the Far East were contemplated by the parties. Will counsel stipulate to that?

Mr. Staring: I believe, if you want to put them in, that both the statement and the reply should go in as they stand.

The Court: Is it not rather late to object to the sufficiency of the answer? These details should have been taken care of before.

Mr. Knudsen: Well, your Honor, the last sentence is a clear admission of the request.

The Court: I don't know what you have done. You have not done anything so far as I know yet.

Mr. Knudsen: I am offering the questions as read and the answers into evidence, if the Court please.

The Court: As read?

Mr. Knudsen: Yes.

The Court: Let the record show that. Is there anything else?

Mr. Knudsen: Now, if the Court please, on June 23, 1955, libelant filed certain interrogatories——

The Court: There are three general [213] headings or paragraphs with subheads in No. 2 and No. 3, is that right?

Mr. Knudsen: That is correct, your Honor. The answers to those interrogatories were filed yesterday by respondent.

The Court: You may proceed now.

Mr. Knudsen: I would like to offer the following answers to interrogatories into evidence:

“I.

“The following ocean-going vessels under charter to Military Sea Transportation Service were in the port of Kure, Japan, for the purpose of discharging cargo in the period between December 1, 1950, and January 15, 1951:

“SS Clarksburg Victory

“SS Simmons Victory

“SS Earlham Victory

“SS Loma Victory

“SS Olympic Pioneer

“SS Hibbing Victory

“SS Marquette Victory

“SS Berea Victory

“SS Lynn Victory

“SS Escanaba Victory

“SS Gainesville Victory [214]

“SS Hunter Victory

“II.

“Vessel Name: SS Clarksburg Victory.

“Owner: Maritime Admin.

“Bareboat Charterer: Mississippi Shipping Co., Inc.



“Vessel Name: SS Simmons Victory.

“Owner: Maritime Admin.

“Bareboat Charterer: A. H. Bull Steamship Co.

“Vessel Name: SS Earlham Victory.

“Owner: Maritime Admin.

“Bareboat Charterer: States Marine Corp. of Delaware.

“Vessel Name: SS Loma Victory.

“Owner: Maritime Admin.

“Bareboat Charterer: States Marine Corp. of Delaware.

“Vessel Name: SS Olympic Pioneer.

“Owner: Olympic Steamship Co.

“Bareboat Charterer: (None.)

“Vessel Name: SS Hibbing Victory.

“Owner: Maritime Admin.

“Bareboat Charterer: American Foreign Steamship Co.

“Vessel Name: SS Marquette Victory.

“Owner: Maritime Admin.

“Bareboat Charterer: Pacific-Atlantic Steamship Co.

“Vessel Name: SS Berea Victory.

“Owner: Maritime Admin.

“Bareboat Charterer: Blidberg Rothchild Co.

“Vessel Name: SS Lynn Victory:

“Owner: Maritime Admin.

“Bareboat Charterer: Dolphin Steamship Corp.

“Vessel Name: SS Escanaba Victory.

“Owner: Maritime Admin.

“Bareboat Charterer: North American Shipping & Trading Company.

“Vessel Name: SS Gainesville Victory.

“Owner: Maritime Admin.

“Bareboat Charterer: American Mail Line, Ltd.

“Vessel Name: SS Hunter Victory.

“Owner: Maritime Admin.

“Bareboat Charterer: Moore-McCormack Lines.

“None of the vessels named above was under any voyage charter and all were time chartered to the United States through Military Sea Transportation Service.

### “III.

“The duration of the terms of the time charters of all the vessels named above was ‘a period of about 120 days from the time of delivery of the vessel or [215] to the termination of the voyage current at termination date.’ The dates upon which the terms commenced were as follows:

“Vessel Name	Date Term Commenced
“SS Clarksburg Victory.....	September 6, 1950
“SS Simmons Victory.....	September 7, 1950
“SS Earlham Victory.....	October 2, 1950
“SS Loma Victory.....	September 7, 1950
“SS Olympic Pioneer.....	July 22, 1950
“SS Hibbing Victory.....	August 30, 1950
“SS Marquette Victory.....	August 13, 1950
“SS Berea Victory.....	September 1, 1950

“SS Lynn Victory.....August 26, 1950

“SS Escanaba Victory.....August 30, 1950

“SS Gainesville Victory.....September 6, 1950

“SS Hunter Victory.....September 8, 1950

“All the time charters of the vessels mentioned above provided that charterer had the privilege of continuing the charter for a second period of about 120 days.”

Libelant rests, if the Court please.

Pardon me, your Honor. I offer those answers to the interrogatories in evidence.

Mr. Staring: And if your Honor please, I object to the introduction of Interrogatories Nos. II [216] and III as irrelevant and immaterial and needlessly burdening the record. They concern other contracts between other parties concerning other ships and have nothing to do with the issues of this case.

Mr. Knudsen: If the Court please, one of the defenses in this case is that the delay at the port of Kure was due to congestion and that the respondent used due diligence under the circumstances obtaining. The law is that in considering the due diligence of the charterer to berth and discharge the vessel, any congestion created by the charterer's own ships in the harbor cannot be taken into account. The answers to these interrogatories show that these vessels were not only under charter to the M.S.T.S. which was causing the congestion but they were owned, with one exception, by the United

States Maritime Administration—obviously under the complete control of respondent. Not only that, but with no exception each one of these charters contained an option on the part of the Government for a 120 day extension, which was not contained in the charter of the Lake Sicamous.

Further, the answers to these interrogatories show that without exception these vessels were delivered to the M.S.T.S. later than was the SS Lake [217] Sicamous so their original 120-day period didn't run out until after that of the SS Lake Sicamous; yet it is uncontroverted in the record at this date that other vessels—most of these vessels—were unloaded before the SS Lake Sicamous, and some of them, without knowing which ones specifically, were unloaded out of turn before the SS Lake Sicamous.

We feel that this is definitely relevant to the defenses under the charter.

The Court: The objection is overruled. The Court does not intend to preclude counsel making proper arguments regarding the matter at the proper time, notwithstanding the present ruling. These interrogatories and these answers are now received in evidence as a part of the libelant's case in chief.

Mr. Knudsen: The libelant rests, your [218] Honor.

The Court: The respondent may now proceed with its case. I believe respondent's counsel has not yet been invited to make an opening statement, and respondent now has that opportunity if he wishes to use it.

Mr. Staring: If your Honor please, I will con-

tent myself with the statement which I made at the opening of the trial and would prefer to get right on with the evidence if that is satisfactory.

The Court: I had the impression that you did not make a complete statement. If I am in error about that you may disregard it, but the Court was merely giving you an opportunity to make whatever supplemental or additional statement you might wish to make at this time as to what you think the proof will be.

Mr. Staring: I appreciate that, your Honor, and thank you for the opportunity and would like to reserve the rest of my remarks for final argument.

The Court: Very well. You may.

You may call the respondent's first witness or otherwise proceed in this case.

Mr. Staring: Respondent wishes to read the depositions of Col. Harold R. Sanderson, Major Joseph Scales and Lt. Col. Raymond Blust which are on file [219] in one document.

The Court: You may proceed.

Mr. Staring: For this purpose, if your Honor please, may Mr. McCormick take the stand to read the witnesses' replies?

The Court: He may do that.

(Whereupon, the reading of the depositions was commenced with Mr. Staring reading the questions and Mr. Edward J. McCormick, Jr., Assistant U. S. Attorney, reading the answers, as follows:)



“COLONEL HAROLD R. SANDERSON

“called for examination by counsel for the respondent, being first duly sworn, was examined and testified as follows:

“Direct Examination

“By Mr. Ferguson:

“Q. Colonel, will you please state your full name?

“A. Harold R. Sanderson, Colonel, United States Army.

“Q. What is your home residence?

“A. 6057 27th Street North, Arlington 7, Virginia.

“Q. And how long have you been in the Army, Colonel?      A. 12½ years.

“Q. Have you had any experience with ordnance?      A. With ordnance? [220]

“Q. Yes. And ammunition?

“A. I have, sir.

“Q. Will you state what experience you have had in the handling of ammunition?

“A. Well, the instructions that I have received from responsible ammunition officers of ordnance, and my own experience and training in the handling of all types of cargo.

“Q. And what experience have you had in the handling of cargo, Colonel?

“A. I have had experience, oh, approximately eight to nine years in military instruction of han-

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dling cargo, discharging to and from ship and barge and pier of all types of cargo.

“Q. And does that include ammunition and bombs and what is known as highly explosive ammunition?

“A. Yes, sir, that included all classes of Army supply and Air Force supply, and in some instances Marine and Navy Class 5.

“Q. In the fall of 1950, say, from August of 1950 through to February of 1951, where were you stationed?      A. Stationed in Kobe, Japan.

“Q. And what were your duties at that time?

“A. I was Director of Port Operations for the Kobe Port Command. This duty entailed a responsibility for the over-all operations of the port and the sub-ports which [221] were assigned to the Kobe Port Command for operation.

“Q. Were the ports of Moji and Kure within that command?

“A. Yes, sir. The port of Moji was under the command of Kobe Port Command, and myself operationally, and beginning in July of 1950 and running on to, I would say, the first part of November, 1950, Moji. Kure became a port of discharge and outloading under the Kobe Port Command in November of that year.

“Q. And how long did that continue? Did it continue up until February, 1951?

“A. Well, it continued up until this date, 1955.

“Q. Moji was maintained as a port?

“A. It was maintained, sir, as a port, but it

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came under a different administrative set-up in November. A port group came from Guam and took over the port of Moji to relieve the Kobe Command's responsibilities there due to the opening up of other ports.

"Q. And one of the other ports was Kure?

"A. Kure, Maizaru on the north coast of Japan, the opening up of a bulk and packaged petroleum depot adjacent to Kure and Hiroshima.

"Q. Can you describe what, if any, hostilities were going on in Korea from the summer of 1950 through to February, 1951? [222]

"A. Yes, sir, I have very good knowledge of that.

"Q. Will you please describe the situation?

"A. In the middle of summer, in July and August of 1950——

"Q. Pardon me. There is no secrecy involved in that?

"A. No, this is common knowledge and appeared in newspapers and magazines."

Mr. Knudsen: I think it is apparent at this point that the Colonel has no actual knowledge of the operations in Korea, and he is testifying from what appeared in newspapers and magazines and documents of that sort. He himself was stationed at the Port of Kobe, Japan, and I object to any testimony from him——

The Court: What response, if any, do you wish to make?

Mr. Staring: It appears to me that the Colonel

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from his position in that port, and from his position in the Army would be in a position to be aware of these facts.

The Court: You mean through official channels?

Mr. Staring: It will appear later they affected his job and his performance of duty.

The Court: The objection is overruled.

“A. It is not a classified history, that the U.N. forces [223] were being pushed rapidly back to the Pusan perimeter, which was an arc stretching approximately thirty miles from the Port of Pusan.

“On September 15 of that year and going back ten days before that, beginning around the first of September, they made up an amphibious fleet of joint forces of Marines and Army, that sailed out from Yokohama with complete combat loads of ordnance and Air Force ammunition to strike the invasion at Inchon just immediately south of Seoul.

“This action took place after being ordered out of the ports of Yokohama and my port of Kobe, and struck at Inchon on September 15. The results of this campaign were the increased cargo work load that went through all ports in Japan for the support of this amphibious operation, resulting in the opening up of the perimeter at Pusan and the non-stop march to the Yalu River, where several units did arrive in November of 1950.

“Towards the end of November, 1950, due to the success [224] of our campaign and the catch-up of tonnage moving into the theatre, many ships instead of coming into Japan to discharge their cargoes,

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were diverted at sea to proceed to Korea because we had opened up ports in Korea to take cargo direct instead of reshipping it out of Japan to the port of Pusan.

“Around the first week in December all hell broke loose, when the Chinese Red Army made their first appearance in numbers in what they called the second offensive, which happened, I believe, in the first week of December, 1950, which resulted in their advance and our exodus from the area north of Inchon and Seoul and on the opposite coast through the Wonchan area, the Hammung and Hamning and the Wonsan port, where we had to evacuate men and materiel, leaving only one port in Japan which we could operate, which was the Port of Pusan.

“Q. Pusan in Korea?

“A. The Port of Pusan in Korea.

“Q. Not in Japan? A. Not in Japan.

“This continued throughout December, continued for several months. Their offensive was great and they swept down through. At the Port of Inchon the tonnage-handling capacities were reduced tremendously, and Pusan bore the brunt of all cargo going into our allied forces in Korea. [225]

“This necessitated what we called the operation ‘Snap Back,’ in other words, to get such equipment out of Korea and into Japan to be used at any other time when a second offensive would be initiated by the allied forces.

“In conjunction and parallel with this operation



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many ships at sea destined for Korea were again diverted to ports in Japan and Okinawa.

“Q. Did that movement and that condition have any effect on the priorities of different types of ammunition?

“A. Yes, sir. Since the latter part of July and August and of September we had built up a tremendous amount of reserve of certain types of ammunition in Korea, and also we had built up a tremendous amount of ordnance ammunition in Japan that we had reached in many cases, which has been brought out by previous testimony in cases that are now a matter of record and have no classification, of certain cargoes which were in abundance, certain types of ordnance and ammunition were in abundance, and other cargoes were very scarce.

“Q. Can you name those different types of cargo?

“A. Yes, sir, there was napalm bombs, the explosive and fragmentation bombs. There was the new type rocket. That was a three and one-half inch rocket, and the pyrotechnics and fire bombs and long range ammunition, mortar shells of the small, medium and large sizes. [226]

“Q. Now, what you have just described is the type of ammunition that had the highest priority, is that correct?      A. Yes, sir.

“Q. Will you describe the ammunition that had the low priority and of which you state that you had an overabundance?

“A. Small arms was down on the list, 30 caliber, 45 caliber 50 caliber. On artillery pieces it was

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the 105's, the 155's which were not of extreme high priority, but I would say were the middle low priority.

"Q. Colonel, showing you Libelant's Exhibit No. 20, will you look through the Air Force cargo, in the latter part of it, consisting, I think, of some 2800 tons, as testified, and state whether this cargo is of the high priority that you have described, or of the low priority.

"A. Yes, sir, this is extremely high. This is the **Air Ordnance five-inch rocket.**

"Q. Now, looking further on, that designates the Air Force cargo? A. Right, sir.

"Q. State whether the high priority cargo was in most instances or in less instances of high priority at that particular time?"

"Mr. Knudsen: I don't understand the question.

"Q. I will put a leading question then. Was Air Force [227] cargo at that particular time usually classified as high priority?

"A. I have looked at practically all of the pages here as against the type number and the type of ammunition, and I would say that this had the highest priority.

"Q. Now, looking forward in the earlier sheets, do you find some cargo which was of the low priority?

"A. Yes, sir. I see quite a bit of 105 and 155 Howitzer.

"Q. Describe other cargo as you look through it which is of the low priority.

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“A. It seems it is all 105 and 155 Howitzer ammunition. It is not high priority, that is, at that time, no, sir.

“Q. Low priority?

“A. Much lower, yes, sir.

“Q. Than that of the Air Force?

“A. Right, sir.

“Q. With respect to discharging of this cargo in Moji in the early part of November, would there be any priority in the discharge of that cargo as against the cargo from other ships?

“A. Well, I would say from my experience and my responsibilities there at that time, that regardless of what port that ship put into, the Air Force cargo would have [228] been given immediate priority.

“Q. Immediate priority and discharge?

“A. Yes, sir, over any other ship or the rest of the cargo on that ship.

“Q. Over the rest of the cargo on that ship?

“A. Yes.

“Mr. Knudsen: That is in November?

“The Witness: Yes, when the Chinese offensive started, although our stock pile of this type of ammunition—I am talking about Air Force—was very limited and regardless of any necessity, this cargo, under any normal conditions, would have received priority.

“Q. As to the other cargo, what was the arrange-

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“A. In general—I will have to speak in general terms of both ships and cargo—naturally any ship arriving at a port of discharge with a high priority cargo on it, whether it was a partial load or a full load, would have been given preference over any other ship that did not have a high priority cargo.

“Q. Now, after the discharge of the high priority cargo, would the lower priority cargo be discharged in favor of other ships having priority?

“A. No, sir. If they were in the vicinity and ready [229] to be unloaded——

“Q. What would be done with such a ship having the balance of such cargo being low priority?

“A. It would probably have to remain on the hook.

“Q. What do you mean by the ‘hook’?

“A. At our mooring and if we had restrictions on the number of ships, we could unload in the anchorage area, working hourly, that ship very possibly would have to pull outside of the harbor to a safe area and bring in another ship into the discharge area to have the cargo discharged.

“Q. State whether or not some of the ships were moved from Moji Harbor down to Kure Harbor.

“A. Yes, sir, in many instances ships would put into Moji to discharge high priority cargo, and I will go a little further and state the reason for Moji. Moji was the closest port to the Port of Pusan, approximately 100 miles farther across the Straits.

“They had a daily ship peddle service where ships would immediately load up high priority ammuni-

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tion and deliver it straight to Pusan daily. In many cases the discharge of high priority cargo at Sasebo or Moji, Sasebo being south of Moji, that high priority cargo would not go into an ammunition dump or depot.

“Q. Then you don’t recall, do you, the vessel Lake Sicamous? [230]

“A. No, sir, I don’t believe I have any recollection of any ship in general. I know the conditions and the priority and impact areas.

“Q. When a ship such as the Lake Sicamous with the balance of her cargo being low priority as you have stated, was sent down to Kure, would she then have any priority or would she have to wait her turn for discharge?

“A. There would be two factors that would have to be considered, sir. First is the priority to the cargo she carries. It is evident that the balance of her cargo was what we call ‘not needed for immediate use’ classification of priority. Second would be her length of time in the theatre. In other words, a vessel could have laid at anchor at Kobe or Osaka or Yokohama and lay there 60, 70 or 100 days without being discharged due to the priority of her cargo, and due to what we call the impact of what we call high explosives. In one area vessels had to be diverted in Japan, not for reason of discharge of priority cargo, but due to the concentration of the high explosives, because all of the explosives were loaded or unloaded out of Japan in heavily, densely



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populated areas, through the cities of Yokohama, Kure, Moji, Sasebo, Kochi and Osaka.

“It was very possible, and has happened, that a ship in Kobe or Yokohama had been there for 60 or 70 days and [231] was directed to proceed to another port, that ship did not pick up priority of discharge, in other words, first on the list, but lost that, or did not pick up a new date of arrival. Its date of arrival in the theatre, regardless of how we cleared up the high priority cargo, would carry on to its next port of discharge. For instance, a ship could come into Kobe, Moji or Sasebo, and it had been in the theatre for 25 or 30 days. She would have a priority of discharge of 25 days when she arrived at that port.

“Q. And then when she went to Kure, she would carry that?

“A. Would carry that priority, sir.

“Q. Of how many days?

“A. With the one day sailing from Moji to Kure, she would have 26 days priority of discharge, not priority of cargo, but priority of discharge.

“Q. Of her cargo?

“A. Right, sir. A ship that had been in Kobe or any other port for 40 or 50 days, with no action, would have that 40 or 50 days when it arrived at its next port. Now, if the ship with 26 days had started to work before the ship with 45 or 50 days came in the harbor, we would not normally stop the 26-day ship and take the stevedores off and go to work on the new ship coming in. But if [232] ships sailed into that port with high priority of 40 or 50 days

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and the other ship was not being worked, that ship would come first.

“Q. According to necessity?

“A. According to necessity, military necessity, yes, sir.

“Q. So, if she had only two or three days in Moji, when she got to Kure, she would have a priority of five days?      A. That is right, sir.

“Q. And she would have to take her priority with respect to ships having the same type of cargo?

“A. That is right, sir.

“Q. Now, at Kure, do you recall what handling facilities you had for the discharge of cargo?

“A. Yes, sir, I do.

“Q. Will you describe them, please?

“A. The Port of Kure, due to the overflow of ammunition entering into Japan——

“Q. That is, during the latter part of November, December and January?

“A. Right, sir, before December. In November, with the great tonnages of ammunition that was moving into Japan and on into the ordnance ammunition depots, which were limited in number, the ammunition depots, that such a big backlog of cargo had accumulated in the only available [233] depots, that steps had to be taken to look further into the old Japanese depots, ones which we had not used since we occupied the country. There were three that I know of: Kure, Miseru, and one in the north of Japan, of which I do not know the name.

“A team of ordnance people and a team from my

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organization made surveys of our area of responsibility, which was Kure and Misuru, to look into the port operations, how much we could handle through the available port facilities in those two ports. I sent an officer and some other people down there to survey the Port of Kure. Now, the Port of Kure was not under the American Army. It was the headquarters of the British Commonwealth Overseas Forces, which was BCOF. It was commanded by Lieutenant General Robertson. The area of Kure was entirely under the control of the British Commonwealth Forces. It had one dock, one railroad track which circulated the dock one way, with no switches. A car came in and had to make a circle to get out. It was immediately adjacent, within a very short distance of General Robertson's headquarters and very close to the city.

"Just off the Port of Kure is an island called Eta Jima, which was the Naval Academy of the Japanese Navy. On that island there were ammunition caves, a depot for Japanese Navy ammunition. This survey, in conjunction with [234] ordnance people and my people and the British, determined what facilities could be used for the handling of ammunition discharge and the access or egress to the hinterland, to the depot.

"Q. Were there many barges available at that port for discharge?

"A. No, sir. Barges in Japan during the Korean campaign were very limited because we sent hun-

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dreds to Korea, purchased them outright from the Japanese, and barges were very tight in Japan.

“Q. In Kure were barges used mainly for the unloading of cargo?

“A. Yes, sir, they could tie one ship up to the pier and they could work from the ship to the rail car, but they were limited as to how many rail cars they could have with ammunition in them at any one time. That was further limited as to how many cars could move from the port area through the city to the depot. That is what we call mass detonation, too much in one place at one time.

“There was a stream discharge by barges, by which we discharged to barges and went to Eta Jima and discharged over there. Again we were limited by how many barges we could have in any given distance apart.

“Q. In other words, because of the explosive qualities of the cargo, they had to be limited in volume? [235]      A. Right, sir.

“Q. From your experience, that is a necessary method of handling, is it?

“A. It is. It is laid down by the Coast Guard regulations and by Army ordnance and of course the Navy.

“Q. Do you know personally or remember personally whether there was considerable delay in the unloading of vessels at Kure during the month of December, 1950, and January, 1951?

“A. I am aware, sir, that throughout Japan in every port handling ammunition, they came under

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the same regulations and conditions, that vessels in my direct Port of Kobe laid at anchor for weeks. In the two ammunition ports of Yokohama some vessels would lay there as long as 90 or 100 days without a stick of cargo being taken off, the hatches being removed or the booms being rigged.

“Q. Can you state what period was common for the delay of vessels in Kure?

“A. Well, I would say that it could not be less than a month, so many came in at one time. It depended on how many were in there. If there was one ship working at the pier and another ship came in, it could not tie up at that pier because certain types of ammunition on that vessel had to go over that pier to that type of ammunition depot.

“Q. Would you say it would be common or uncommon [236] for a vessel to lie 60 or 80 days in Kure before it was discharged?

“A. Depending upon conditions, sir.

“Q. During December, 1950, and January, 1951, as you recall?      A. I would say in every port.

“Q. During that period?

“A. One port in Japan in those hectic months of December, January and February.

“Q. Who was under your command in Kure? You had a command at Kure, the Port of Kure?

“A. The port command had no responsibility. I had the operational responsibility, the operation of the port itself through what we call a sub-port headquarters. Lieutenant Colonel Blust was the officer I recommended to make the original survey of the



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Port of Kure, and I believe this was shortly before Thanksgiving or around Thanksgiving, to look into the Port of Kure as an ammunition-handling port.

“Colonel Blust went down there and came back with a report. He proceeded to headquarters in Yokohama and made his report there with ordnance, of course, and the recommendation with the British forces there how much could be handled. Nothing had been done prior to Colonel Blust’s trip with the rehabilitation of the Japanese ammunition [237] depots. If the depots had been opened up and had all their equipment in operable condition, discharge naturally could have been expedited, because you could handle more, but because they had not been, the Port of Kure for quite some time could not be counted upon as a full-fledged ammunition port due to the hinterland facilities not having been rehabilitated in five years, since 1945 or prior thereto.

“Q. Was that a port for vessels with cargo similar to that shown in the manifest, Libellant’s Exhibit 20, that were sent from Yokohama and Moji for discharge?

“A. Yes, sir, vessels were sent there to have their cargo placed into the ammunition depots.

“Q. Will you state whether or not that was for the purpose of accelerating or speeding up the discharge of these other vessels?

“A. Yes, sir, it was to alleviate our impact at Kobe where we were limited to handle only one ammunition ship at one time. We could have six or eight ships sitting outside the harbor in the safe

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zone, but only one ship could be handled at one time.

“Mr. Knudsen: Was that Kobe?”

“The Witness: Yes, sir, and it was to alleviate the congestion of ships laying out there on the hooks in Yokohama. In other words, it was to open up places to [238] get rid of the cargo so we could use the ships, because ships were needed. Empty bottoms in the days of December and January were sent to Korea to roll up the First Marine Division in Hamnong and Wonson.

“Q. You don’t personally have any knowledge of the arrival or discharge of the Lake Sicamous, now?”

“A. No, sir, not of any specific ship. I know I was called up many times on the phone from our out ports on a question of discharge, and in many cases I would not get copies of the manifest that would be sent to the port where the ship was. They would call up and say: ‘I have this type of ammunition, I have nothing working, it is not high priority, can I discharge it?’ Or: ‘Do I have anything coming in in the next 24 hours that has high priority cargo on it?’ And I would look at my records which would show what ships were due in the next 48 to 72 hours, and orders were passed down from higher headquarters which I would pass on to my various out ports, where a ship is coming in which is a high priority vessel and that vessel must have high priority.”

Mr. Staring: You may cross-examine.

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(Whereupon, on cross-examination, Mr. Knudsen read the questions and Mr. McCormick read the answers, as follows:) [239]

Mr. Knudsen: (Reading.)

“Cross-Examination

“Q. Colonel, in your testimony here today you have been speaking, I take it, rather generally as the officer in command of the area from your knowledge of the general conditions, is that correct?

“A. Not in command. I did not have command. I worked for the Command. I was director of port operations and in such capacity I was responsible to the Port Commander for efficient operation of his responsibilities.

“Q. Now, you are speaking of the Port Commander of Kobe? A. Right, sir.

“Q. Did you supervise the port operations at Kure? A. I did, sir.

“Q. Did you supervise those operations on the spot at Kure or from Kobe?

“A. Both. I would make a trip to Kure to look into the operations. I would go to any one of the ports of which I had operational responsibility. People that were selected to operate the Port of Kure were such that I had complete confidence in them which did not necessitate my running the Port of Kure personally. [240]

“Q. Approximately how often during the month of December, 1950, and the month of January, 1951,

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were you in the Port of Kure? Would you have any idea?

“A. I believe I was there once in the month of December and it was either the latter part of January or the first part of February.

“Q. During the months of December, 1950, and January, 1951, how many Japanese ports were you in? How many did you visit?

“A. I will run down the coast of Japan. Our Kobe Port Command had every port south of Yokohama, which included Port of Nagoya, Osaka, Kobe, Tokyama, Wakayama, Kure, Hiroshima, Miseru—that is the only port in Japan on the north Coast—Moji.

“Q. Just a moment, Colonel. I am speaking only of December, 1950, and January, 1951.

“A. Exclude the Port of Moji in December, 1950.

“Q. So, when you on direct examination stated that any condition was general in all ports in Japan, you only know that of your own personal knowledge with respect to those ports that you visited? I mean those are the only ports you observed?

“A. No, sir; I observed the Port of Yokohama. It was under another command entirely. I was in daily communication by telephone to the transportation—— [241]

“Q. I am not interested to whom you talked on the telephone.”

Mr. Knudsen: If the Court please, I move to strike anything in relation to telephone conversations.

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Mr. Staring: This is information officially acquired during the course of the Colonel's official duties.

The Court: Is he outlining here in this record such advices or is he saying what he was informed?

Mr. Staring: He is, I believe, stating the source of his information as to some matters as to which he has already testified. The source of that information was telephone advices from other ports.

The Court: On cross-examination now, does he purport to give a telephone conversation that was not asked for?

Mr. Knudsen: No, your Honor. He is testifying——

The Court: Well, what he said up to now is not objectionable. Does it go to something else following? He has not said what he did or what it was he got over the telephone.

Mr. Knudsen: Well, if the Court please, we will proceed, and I will make further objections.

The Court: The objection is overruled as [242] to anything that has happened up to now.

Mr. McCormick: (Reading.)

"A. I was in daily communication by telephone with the transportation section, the Japanese logistical command at Yokohama, Japan, at which time the status of the ports under my jurisdiction were reported on.

"Q. Those are the ports you just named?

"A. Right, sir.

"Q. And in addition to getting telephone reports,



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you visited those also during those two months, I take it?      A. Right, sir.

“Q. When Lieutenant Colonel Blust surveyed the Port of Kure and the Japanese depots approximately around Thanksgiving, 1950, did he report back to you his findings?

“A. Yes, sir, he reported back to me and the port commander when he was en route to Yokohama.

“Q. Did he report his findings with respect to the availability of the Japanese depots?

“A. The ordnance, that is their responsibility, made a report of the depots which would have to be rehabilitated before any great amount of cargo or ammunition could move into those depots.

“Q. And that report was made some time during the month of November, 1950?

“A. I think it was in November, because they were [243] given a short time to make this survey. As to the exact dates and the period covered, I cannot say.

“Q. And at that time other depot facilities in and around Kure were taxed beyond their capacity, I take it?

“A. Kure had not been opened up for ammunition until this survey was completed.

“Q. Were those the only facilities for storage of ammunition that were to be available at Kure, then?      A. At Kure, yes, sir.

“Q. Now, if a vessel came in—let us take the Lake Sicamous with the remainder of a load and that remainder consisted almost exclusively of 105

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and 155 millimeter Howitzer artillery ammunition—if that vessel came into the Port of Kure on December 12, there would be no place for its cargo to be stored when it was discharged, is that correct?

“A. No, sir, I would not say there was no place for her cargo to be stored. There was available area for that cargo to be stored.

“Q. There was available area for that cargo to be stored?

“A. There was available space, we will put it that way, for that cargo to be physically placed in a certain area.

“Q. As I gathered from your testimony before, that [244] space was not the proper type of space. Am I correct?

“A. No, sir. I don't believe it is a matter of record that I said it was the space by type. It was the port capacity that could handle so much cargo through the port, port clearance of that cargo.

“Q. Now, I don't understand what you mean by port clearance. Will you go into some more detail on that?

“A. There are two steps in cargo handling: The discharge of ships and the movement of that cargo through and into the hinterland to its final destination. An hour glass has a very narrow waist, and it is not the ship discharge or the capability of a depot to receive it, it is where you place it for its first rest on the pier, and it is the reloading or another mode of transport to its final destination.

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“Q. And it is the second stage, this move away from the pier to the depot that there were inadequate facilities in December and January we are talking about.

“A. I would say the facilities were more efficient than the over-all restrictions put on the amount of cargo that could be moved through a populated area. I will give you an example to clarify that. A ship loaded with general cargo can discharge its cargo at a very high rate and can clear it through the port onto rail or truck, because there are no restrictions placed on the cargo itself. When you [245] are handling explosives it is the amount that you can handle by passing any one given point, which may be limited to 100 tons of cargo which can be in an area one-half mile wide or a mile long that can pass a given point, and no other cargo can pass that until that cargo has gone through and passed for a mile. Those are the restrictions placed on it.

“Q. So, the problem was a slowdown to the extent the slowdown was attributable to the fact you could take the cargo away from the pier at a certain rate?      A. That is correct.

“Q. And that was due to the fact there was only one railroad line running from the pier, is that correct?

“A. That is, one track on the pier. Now, the tracks that led from there to a marshaling yard where there are several lines of track, where trains were made up or moved to any depot or any area

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that the restriction is how many cars you could place on a string on that one side of the dock and load into and then move off before you could bring in another string of empties for discharge. Now, the restrictions are such it is not only how many ships or barges you could have, it is how many rail cars you could have while you are working, because the danger is not as great when you have the cargo physically lashed down in a freight car and it is moving. The danger is [246] when you have unskilled people who are taking it off the ship, putting it into a rail car and shoring it up and stocking it, because you have there the open fires and cigarettes, and so forth. That is the acute danger, while you are handling the cargo, it is not while in transit.

“Q. Colonel, if I were to advise you that this ship was discharged of approximately 7,000 tons of 105 and 155 millimeter artillery ammunition in an elapsed time of approximately six days, 22 hours and 30 minutes, would you say that that is a good average rate of discharge under the circumstances at Kure?

“A. I haven't checked the weights in the manifest. Are those figures you are giving me, the 7,000 tons, are they official as far as this document is concerned?

“Q. No. I am giving you an approximation.

“Mr. Ferguson: He is putting up to you a proposed amount of tonnage to be unloaded at a certain time.



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“A. That type of cargo, 105’s and 155’s, is easier to handle than the majority of other types of high explosives. I would say that is a good discharge rate. If that ship carried 7,000 tons of ammunition and with the restrictions placed upon the amount that you could have at any one given time, that that ship got that service in six or seven days, whatever the case may be, I think it got a [247] normal rate of discharge.”

Mr. Staring: I will waive the objection.

Mr. Knudsen: Going to the top of page 31 (reading):

“The evidence shows when she started discharging she discharged in an elapsed time of six days, 22 hours and 30 minutes.

“Mr. Ferguson: If the record shows that, I have no objection.

“Q. (By Mr. Knudsen): Colonel, let me say this also: If I were to tell you that this ship commenced her discharge at Kure, both alongside the dock and also at the same time discharged over the other side into barges, and that she discharged in that manner for approximately two days and was then moved out into the stream and completed her discharge over the side into barges out in the stream, and that took approximately an additional five days or four days and some odd hours, what would that indicate to you with respect to where that cargo was being taken from the ship, first, with respect to the discharge at berth?

“A. Well, you haven’t given me the contingen-



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cies when you make that statement, if you go along with me. You have made a statement that a ship—is this a ship or the ship? [248]

“Q. This is the ship.

“A. The ship was first berthed at a pier where cargo was moved to pier and simultaneously to barge?

“Q. Discharged to pier and barge.

“A. It was moved then to an anchorage in a stream where the balance of the cargo was discharged to barges?

“Q. That is correct.

“A. Not knowing the decisions of the operational officer who changed her berth, I would say that it had come to a point that he could receive no more on the pier and moved it to an anchorage so as to complete discharge to barges.

“Now, the reason he placed the cargo in barges is based upon where that cargo was going. I don't know whether it was going to be immediately transhipped to another ship or was going to be transferred to another shore site unloading point where a ship could not tie up, with shallow water. There are many conditions.

“Q. I was wondering whether that indicates that the shells that went aboard the barges were placed in the caves at Eta Jima.

“A. If you are talking about the discharge at Kure, it is possible that another ship was due in or was waiting berth at a pier to discharge the cargo that was going to the mainland, whereas what was left on the Lake Sicamous, [249] the ship in ques-

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tion, that cargo was destined to another area where it could be handled by barge alone.

“It would be a very poor operational thing to have a ship at a berth discharge the cargo that is going to an island, where that ship could be moved to a buoy and handled, whereas the ship was waiting at anchor that should be at a berth to discharge its cargo going directly to the mainland.

“Q. Do you know what ships were actually in the Kure harbor in December and January, 1950, and 1951? A. No ship by name.

“Q. Do you know whether the ships in there were primarily M.S.T.S. ships?

“A. To the best of my knowledge, the only vessels that carried American ammunition to the theater were vessels chartered or operated by M.S.T.S.

“Q. So, if the harbor at Kure were congested, it was congested with M.S.T.S. ships?

“A. For the record, prior to the opening up of the Port of Kure for ammunition, the Port of Kure was not a free port in Japan.

“Q. That doesn't mean anything to me, Colonel.

“Colonel, if the Port of Kure were congested with shipping in the month of December, 1950, would you say that that congestion was M.S.T.S. ships? [250]

“A. I would say that I would go further than that, not only M.S.T.S. ships, I would say all ships. It was congested by vessels carrying cargo in support of the Korean operations.

“I will further qualify that. As I mentioned be-

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fore in my testimony, it was the headquarters for the British Commonwealth occupation forces, and they were supplied by British ships from Australia, New Zealand and England, supplied direct.

“Q. And did those ships also discharge at the only pier that you have referred to previously?

“A. I believe the restrictions placed on by General Robertson was that priority naturally must be given to a berth for any ships carrying cargo for support of the British forces who were located there and were in support of the British forces in Korea.

“Q. Was there just the one pier for ships of all nations?

“A. To the best of my knowledge, I think it was one pier. Probably two ordinary sized ships could tie up to it.

“Q. You have no knowledge of how many ships came in with U. S. cargoes and how many came in from other nations during this period?

“A. Not until I refer to the record. We had no control over any other ships in that harbor except those [251] carrying POL, packaged POL, and ammunition. We had no control.”

Mr. Staring: Your Honor, Mr. McCormick has another obligation and has to leave, and Mr. Cushman is here. May he now replace Mr. McCormick?

The Court: That may be done.

(Whereupon, Mr. McCormick retired from the courtroom and Mr. Cushman took the witness stand and continued reading the answers.)

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Mr. Staring: (Reading.)

“Q. What do you mean ‘packaged POL’?”

“A. Drummed POL.

“Q. What does ‘POL’ mean?”

“A. Petroleum, oil and lubricants, gas, diesel and greases.

“Q. Were there any air raids during December, 1950, and January, 1951, at Kure?”

“A. Not to my knowledge, sir.

“Q. Were there any blackouts?”

“A. Not to my knowledge. I have no recollection.

“Q. Were there any hostile forces on the shore at Kure?”

“A. Hostile, armed, I would say no. Sympathizers, pro, that is a different matter. [252]

“Q. With respect to priority cargoes, as I understand it, the Army had all the 105 and 155 shells it wanted in Japan, but they didn’t have enough of these five-inch rockets, is that correct?”

“A. I don’t say that we had enough. You never have enough, because you don’t know what the contingencies or the flow of battle will be over a period of 30 to 60 days, but 105’s and 155’s had been manufactured for years and been put to good use, but the rocket type ammunition was a thing that has grown out of World War II. It was something that was developed and made a necessity due to its terrific effect on troop concentrations and vehicular traffic and rails far behind the enemy lines. The rockets—I forget the name of the big rocket Gen-

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eral Dean used—the Bazooka 3.5. The need was the five-inch. I don't know what they called it, the Tiny Tim, or whatever it was. It was extremely high priority. It could do things that other similar type ammunition could not do.

“Q. But they wanted the rockets more than the artillery shells?

“A. May I clarify that? The rocket is not Army; they are Air Force.

“Q. Let us put it this way: The Air Force wanted their rockets a lot worse than the Army wanted its artillery shells? [253]

“A. Right, sir.

“Q. And those matters are coordinated for the convenience of the Government. The Air Force rockets were given priority of discharge?

“A. Yes, because the Air Force using those rockets became the Army's artillery.

“Q. You have a word for that in the Service, don't you?

“A. When you say the Air Force was given priority, I may mention that that is a unified command. The Navy, Army and Air was under one man and he made the determination for all forces. It wasn't the need of the Navy, Army or Air Force on one level as such. They came under General MacArthur, who was Supreme Commander of all forces, and he made the decisions.

“Q. In other words, one command coordinated the needs of supplies for all forces?



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“A. That is right, sir, based on the recommendations from the various forces.

“Q. And whatever was needed most was given a priority discharge? A. Right, sir.

“Q. You don't mean to say, however, that artillery was a low priority cargo at that time? Don't you mean it was lower than these rockets? How would it stack up with [254] respect to general cargo such as PX supplies, and so forth?

“A. Very few PX supplies moved in during those hectic days, sir.

“Q. You had other supplies coming in?

“A. I will go back again. I will go back to this regulation which was set down by the men experienced in many years of how much high explosives you can have in one area. It doesn't say that you have to restrict your other cargo. You are only restricted to the ammunition. You could go ahead and put 5,000 tons of cargo through that port of general cargo. The only stop of providing the people and the facilities you are using for that general cargo did not interfere with the allowable discharge and handling rate of your priority cargo.

“Q. Do you know whether any lower priority cargo came into Kure during this period?

“A. I don't know unless I look at the daily work record and the manifest of the ships at the same time.

“Q. Do you know where the manifests are now?

“A. I don't know. They were retired to Kansas City or St. Louis or some place, perhaps they are

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still in the possession of the Port of Kure or the Port of Kobe. They are the regulations—there are regulations out when you are to destroy records which have no further value, and after one year. You keep them for one year and [255] turn them into the next immediate area for storage and they eventually wind up in, I believe, the storage of records at St. Louis, Missouri.

“Q. But you don’t know where these particular records are?

“A. No, sir, I do not know. There are probably 500 of these documents. Libelant’s Exhibit 20 here was made for this one ship. There are probably several stored some place. The balance have been destroyed.

“Q. Do you know of your own personal knowledge whether or not vessels coming into Kure during December, 1950, and January, 1951, were discharged in the same order in which they came into the Port of Kure?

“A. I cannot say. I would have to look at the arrival of the ships and find out when their hatches were opened and when they were worked, in either case.

“Q. You don’t know where those records are?

“A. Those are the records that are either in the Port of Kure or the senior Port of Kobe. If they are official records, now, that have a number like ‘Department of Army Form,’ which is a recognized form put out by the Army—it is very possible that local forms were made for the use of the port. It is

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very possible those would never be brought back to St. Louis because they are not a recognized form. [256]

"I cannot answer the question whether any vessels came into the Port of Kure during that period, specifically, now, any vessel that was discharged prior or during any other vessel's discharge.

"Q. You say you don't recall the S.S. Lake Sica-mous, so you don't recall whether the military authorities knew her charter period had run out?"

Mr. Staring: I object to the use of the term. We will waive the objection.

"A. I might say this, that I don't know. We made it no point of business to look into the ship's charter. We were Army. Charters are made by Navy.

"Q. So, as a general proposition the port authorities who controlled the discharge of the vessels had no information whatsoever as to whether or not charters had expired or were about to expire or what terms vessels were chartered for?

"A. There were two ways we found out or we would be informed, and that would be through the M.S.T.S. representative who would be in Yokohama, who would advise the transportation section of the Japanese Logistical Command of certain conditions or whether the master of the vessel, when he made his port of call, advised the port authorities, who were responsible for his discharge, that his charter was to run out a certain date and he wanted his ship [257] discharged, and so forth. That would be

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the only two ways we would know about charters running out.

“Q. Do you recall when it was that there was a shortage of artillery shells in Korea in the Korean War? Was it during this period?

“A. No, sir, I don’t know whether—on our second offensive, when you are advancing and your troops are before your artillery—this is my concept—that when you are advancing and your troops are before your artillery to give them cover and protection and to clear their way, that is when your artillery is most important. Probably at a later date, in 1951, before the slow-down in hostilities, probably in the spring of 1951, when we started our offensive again, that artillery then could have been a priority, 105’s and 155’s could have been priority.

“Q. But you do recall, do you not, Colonel, that a Congressional investigation disclosed that at one time there was a very serious shortage of artillery ammunition in Korea? It was very heavily criticized.”

The Court: Pardon me.

Mr. Staring, how much more defense testimony do you have to offer for the respondent?

Mr. Staring: If Your Honor please, I will produce no witnesses beyond these depositions. These are the last except that I may wish to put [258] in some request for admissions of fact and the response made to it.

The Court: Very well. There are about 20 or 30 more pages to be read I believe. You may proceed.



(Deposition of Colonel Harold R. Sanderson.)

Mr. Knudsen: (Reading.)

“Q. But you do recall, do you not, Colonel, that a Congressional investigation disclosed that at one time there was a very serious shortage of artillery ammunition in Korea? It was very heavily criticized.

“A. I don't know the period they were talking about 155's or 105's. There were many times when one item would be in short supply because of the usage of what we call the mortality rate or the basis we used for issuance of a round of ammunition or a piece of ammunition, which could be in many cases a unit on the right flank, a regiment was deficient when called upon to take a certain area or to fall back, the ammunition to retain their objective or hold their position, the fluidity of battle and the type of enemy you are facing, that a certain amount of ammunition which is classified as so much per day per man would far exceed your normal requirements.”

The Court: He is the longest-winded witness I ever saw.

Mr. Knudsen: (Reading.) [259]

“Q. When did you commence utilizing the Japanese depot at Kure for ammunition storage?

“A. I believe it was in November or the early part of December. I don't know the exact date. It was in 1950, either in the latter part of November or in December, I mean. I cannot verify that because I don't have the actual date where the first round of ammunition went over the side of the ship.



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“Q. But you do know these depots were not rehabilitated before Kure was reopened as a port?

“A. I believe some storage had been taking place on the mainland prior to that. I say this because the nearest port for ammunition for Kure was Kobe port. Our ammunition from Kobe went to what we call Hirona, which was located 50-some miles away from Kobe. Naturally there is a limitation of what a depot can hold. So, efforts were made by ordnance to locate other depots in the immediate area of Kobe to take the overflow of cargo, and in my recollection ordnance did go down to the Kure area prior to the survey of the port facilities and Eta Jima facilities, to receive ships, and naturally they would go to the island of Eta Jima to take care of the cargo. I have some recollection that a survey was made of ordnance at Kure to handle cargo coming through the Port of Kobe, turned south instead of going north to Hirona. [260]

“Q. With respect to artillery shells being discharged at Kure, where would they go from the Port of Kure?

“A. I don't know. I couldn't say. It is my opinion that some went to the island of Eta Jima and some to the mainland.

“Q. But you don't know?

“A. No, sir, I don't know. I would have to see all the freight waybills and the final destination and the receipt of that cargo.

“Q. Do you recall that the S.S. Hunter Victory was in Kure harbor in that December or January?

(Deposition of Colonel Harold R. Sanderson.)

“A. No, sir, I cannot recollect the name of any one vessel.

“Q. You can’t recollect the Clarksburg Victory?

“A. I can recollect ships’ names because those vessels have been in and out of Kobe port, but not on any specific voyage at any one time.

“Q. Colonel, I don’t want to waste any more time on this, so let me do it this way: I would like to read a list of vessels and ask you if you specifically remember any one of those vessels being in the port of Kure during December, 1950, and January, 1951:

“The S.S. Hunter Victory; the Clarksburg Victory; the Earlham Victory; the Lynn Victory; the Olympic Pioneer; the Hibbing Victory; the Marquette Victory; the Berea [261] Victory.

“Do you recall any of those?

“A. Not at any time at that specific period being in the Port of Kure.

“Q. Now, to your knowledge was the S.S. Lake Sicamous delayed at all in the harbor of Kure due to any fault of the ship’s master or her crew?

“A. I don’t know, sir, whether anything like that occurred. I don’t know whether the master filed any notice of protest or anything that happened in the Port of Kobe. I don’t know whether he made out a readiness for discharge application. I don’t know any of those facts. I don’t know of anything that happened in all respects. I don’t know whether there was any change when the ship was ready for discharge, anything wrong with the cargo.

(Deposition of Colonel Harold R. Sanderson.)

“Q. You just don’t know anything about that particular vessel?

“A. No, sir, or any other vessel in Kure.

“Q. Do you recall just when Kure was opened up as a port for American supplies?”

Mr. Staring: Waive the objection.

“A. To my recollection it was some time in November when it was first opened up for shipping. Prior to that date I don’t believe that Kure was opened up as a free port. [262]

“Q. Is it not a fact that the Chinese crossed the Yalu on November 24, 1950?

“A. There again, sir, I don’t know, but I will say that I don’t know exactly any one date they crossed the Yalu. My recollection in history is that the first concrete evidence we had of Chinese being massed was just immediately in front of the First Marine Division in the reservoir area, which was quite some distance south of the Yalu.

“Q. Perhaps I was too specific. Let me put it this way: As far as the Army was concerned, is it not true that the Chinese entered the war on November 24? That is the date that was given?

“A. I believe it was some time around that period, some time around the last part of November and early December, 1950.

“Q. The evacuation of Hungnam was completed on December 16, 1950?

“A. I don’t know the exact date, but I knew it only took a few days to get out of there.

(Deposition of Colonel Harold R. Sanderson.)

“Mr. Knudsen: That is all I have.

“Mr. Ferguson: I have only one question.

“Was the Certificate of Readiness of delivery of these ammunition ships required in your districts?

“The Witness: They were not required, sir, but [263] I found in my experience in commercial ports where I was operating, that many of the masters did file a notice of readiness.

“Mr. Ferguson: That is all.

“Mr. Knudsen: Thank you very much, Colonel.”

The Court: The deposition of this witness Sanderson is now received in evidence. Did you offer it as part of the repondent's case in chief?

Mr. Staring: Yes, Your Honor.

The Court: It is so received with like effect as if he had here testified orally under oath from the witness stand to the same effect as that stated in the deposition.

Anything else?

Mr. Staring: Next is the deposition of Major Joseph Walter Scales, commencing on Page 46. Skipping the preliminaries and beginning in the middle of the page——

(Whereupon, the reading of the deposition of Major Scales was commenced, with Mr. Staring reading the questions and Mr. Cushman reading the answers, as follows.) [264]

“MAJOR JOSEPH WALTER SCALES

“called for examination by counsel for the respondent, being first duly sworn, was examined and testified as follows:

“Direct Examination

“Q. Now, will you please state your name, your rank and your station?

“A. Joseph Walter Scales, Major, United States Army Reserve, stationed at Fort Eustis, Virginia.

“Q. How long have you been in the Service?

“A. In the Service 12 years and five months, sir.

“Q. What, if anything, have you had to do with the ordnance and the handling of ammunition?

“A. My original experience in the Army was as an artillery officer. In 1950 I was detailed to the Transportation Corps.

“Q. And what part of 1950?

“A. December, 1950, I was detailed into the Transportation Corps.

“Q. Did you say December?

“A. Yes. I had one previous detail in the Transportation Corps, which was in 1946 and 1947.

“Q. Now, where were you stationed in December, 1950? A. In Kobe, Honshu, Japan. [265]

“Q. What were your duties?

“A. Chief of terminal operations, Kobe Port.

“Q. Did you have anything to do with the Port of Kure? A. Yes, sir.

“Q. State what you had to do with the Port of Kure.



(Deposition of Major Joseph Walter Scales.)

“A. Kure was a subport of Kobe, Japan. Kobe Port was the operational headquarters of Kure subport. As such, the operations division and the terminal operations division had staff supervision over operations at Kure subport.

“Q. Did you have anything to do with a certain ship named the Lake Sicamous that was in Port of Kure in December, 1950, and January, 1951, to your recollection?

“A. Specifically, I recall the Lake Sicamous by name only, the fact that the Lake Sicamous was there. However, any vessel that was in the Port of Kure from 1 December, 1950, until July of 1953, that was in port to be either loaded or discharged, the staff supervision of that operation was under my supervision.

“Q. I will ask you to look at Libelant's Exhibit 20, a manifest of cargo of the Lake Sicamous, and ask you to look first at the cargo designated as Air Force cargo.      A. Yes, sir.

“Q. And then the other cargo designated forward as ordnance corps.      A. Yes, sir.

“Q. Now, was there in existence at Kure any priority [266] regulations for the discharge of different types of ammunition?

“A. Well, insofar as a standing priority, one that would have been in existence at all times, there probably was not. However, priorities for ammunition by various types changed according to the situation that was in existence in Korea at that particular time.

(Deposition of Major Joseph Walter Scales.)

“Q. In December, 1950, and January, 1951, was there any priority for Air Force cargo over cargo for Ordnance, Army?

“A. Yes, sir, I would say the Air Force cargo at that time was definitely priority and, definitely, this cargo was rockets.

“Q. Would you say it was high or low?

“A. It would be a high priority item.

“Q. Do you know why it was designated high priority?

“A. Well, at that time, of course, the Chinese, or shortly before that time the Chinese had just entered the Korean War and this type of ammunition, which I see is rockets, was being used by the Air Force almost as fast as it could be delivered to the theatre. In many instances cargo of this type discharged from Japan was sent to Korea to be used against the enemy.

“Q. Was there a practice of discharging a portion of a cargo consisting of high priorities and leaving the [267] low priority cargo in the vessel?

“A. I have seen that not only at this particular time but throughout the entire Korean War, sir.

“Q. Looking at the Libelant's Exhibit No. 3, what was the practice with respect to the cargo listed in there, the Air Force cargo and the Army cargo, with respect to taking out a portion, that is, discharging the Air Force cargo and leaving the Army cargo aboard the ship?

“A. I would say that would be an accepted practice at that time.

(Deposition of Major Joseph Walter Scales.)

“Q. An accepted practice? A. Yes.

“Q. Do you recall any particular vessels that were in the Port of Kure during December, 1950, and January, 1951?

“A. The one I recall most vividly is the Hibbing Victory.

“Q. What brought that to your attention?

“A. The Hibbing Victory arrived in the port with her lower No. 1 hold loaded with water, and the cargo contained therein was 155 Howitzer shells, a separate loading type of ammunition. I recall that because there was a marine casualty investigation conducted at that time regarding that vessel.

“Q. Do you recall other vessels such as the Marquette [268] Victory being in there, the Berea Victory, the Lynn Victory?

“A. Those vessels, particularly the ones you just named, sir, were in all probability there or could have been there at that time.

“Q. Do you recall the vessel?

“A. Actually I couldn't say that I recall an actual vessel being there other than the Hibbing Victory, the one I just mentioned.

“Q. And you recall the Hibbing Victory by reason of the investigation? A. Yes, sir.

“Q. Do you recall whether vessels were detained in the Port of Kure awaiting discharge for periods amounting to as much as 30, 60 and 75 days?

“A. I know that within the theatre there were ammunition vessels that had been on the hook as much as 80 days, and when I first arrived in Kobe

(Deposition of Major Joseph Walter Scales.)

on the first of December I was informed that the ammunition vessel situation in the whole theatre was very critical; that due to this break through by the Chinese, the logistic picture in Korea was all retrograde; vessels that had originally been destined for the theatre with full intent to divert to Korea had to be run into ports in Japan; and that port clearance capabilities, ammunition depot capabilities to receive, the rail system to move, had been taxed to the [269] utmost. The ports were working a 22-hour day, with only time out to permit shifts, because all of these vessels were working in streams. The Port of Kure at that time had been opened up as such as an ammunition port, and the ammunition ports at Eta Jima and Hiro Jima, to relieve some of this terrific pressure on the ammunition needed.

“Q. Do you recall of having anything to do with the Master of the S.S. Lake Sicamous?”

“A. I do not.”

Mr. Staring: That is all.

(Whereupon, on cross-examination, the questions were read by Mr. Knudsen and the answers by Mr. Cushman as follows:)

“Cross-Examination

“By Mr. Knudsen:

“Q. Major, you were stationed at Kobe?”

“A. Yes, sir.

(Deposition of Major Joseph Walter Scales.)

“Q. Did you go to Kure very often during December, 1950, and January, 1951?

“A. Actually I didn't go down at any time during that period. I had only arrived on the job there and it was some time in February before I made my first trip to Kure.

“Q. Was the Hibbing Victory a United States vessel? A. Yes, sir. [270]

“Q. A M.S.T.S. ship? A. Yes, sir.

“Q. And she had ammunition for U. S. troops?

“A. Yes, sir.

“Q. At any time during December, 1950, and January, 1951, was there any air raid at Kure?

“A. I would say no, sir.

“Q. Was there any air raid alert at Kure or Kobe that you know of?

“A. Of course, we had what we were told were practice alerts continually. Of course, we would never know whether the alert we were in was an actual raid or practice. Notices would come from our headquarters, which was the Southwest Command. They would notify you if Condition Yellow or Condition White actually existed, whether they were Russian or Chinese.

“Q. You never would know?

“A. You never would know.

“Q. Were there any hostile forces ashore at Kure? A. No, sir.

“Q. Kobe? A. No, sir.

“Q. Moji? A. No, sir.

“Q. Do you know if the Japanese ammunition



(Deposition of Major Joseph Walter Scales.)

dumps at [271] Eta Jima and Kure were rehabilitated and ready for ammunition storage on December 1st?      A. On December 1st?

“Q. Yes, by December 1st.

“A. By what standards do you mean? Do you mean by the standards we would normally accept within the Ordnance Corps for the movement of ammunition and the acceptance of ammunition, or by what?

“Q. Were they ready to take and did they commence storing ammunition in them?

“A. They took some ammunition. They received ammunition, yes, sir.

“Q. Were they still in the process of doing further rehabilitation?

“A. They were rehabilitating ammunition depots within Japan until 1953, sir, yes.

“Q. I want to be a little more specific particularly with respect to the facilities right there in and around Kure. Do you know whether they were still in the process of rehabilitating those Japanese depots in December, 1950?

“A. I would say yes, sir, such things as rail lines, revetments and things like that that had been demolished under the occupation policy.

“Q. As they were rehabilitated they would be ready for more storage? [272]

“A. Their total storage capacity would be greater, yes, sir. Their daily capacity would be greater, yes, sir.

(Deposition of Major Joseph Walter Scales.)

“Q. Would you class ammunition generally as one of the vital supplies in war time?

“A. Well, yes, ammunition as a whole naturally is a vital material.

“Q. From time to time one particular type of ammunition might be more needed than at another time? A. Yes.

“Q. But ammunition generally is always urgently needed?

“A. As a class, ammunition is generally needed, yes, sir.

“Q. Generally speaking, were you advised as to the status of the various M.S.T.S. ships in the harbor at Kure with respect to whether or not they had served out their full charter period or only a portion of the charter period, and if so how much?

“A. No, sir, we received a ship status report twice daily at 800 and 2400 hours daily.

“Q. What information did that report contain?

“A. It gave first the name of the vessel. It gave its ETA, which was scratched out when it had an ATA, the type cargo it had, and its ETC and its ATC and sailing time. There was a board the size of that wall (indicating) [273] showing all the vessels in the port.

“Q. ETA is what?

“A. Estimated Time Arrival. ATA is Actual Time Arrival. ETC is Estimated Time Completion. ATC is Actual Time Completion.

“Q. Do you know that the S.S. Lake Sicamous

(Deposition of Major Joseph Walter Scales.)

was almost thirty days in the harbor at Kure awaiting a berth for discharge?

“A. Only through recollection, through what has transpired here would I be able to state that.

“Q. You have no actual remembrance of it at the time? A. No, sir.

“Q. So, you are not in position to advise us whether or not any of that delay was due to any fault of the ship officers or crew?

“A. No, sir, I could not tell you that, sir.”

The Court: Do you offer this deposition?

Mr. Staring: I do, Your Honor.

The Court: The deposition of Major Scales is now received in evidence as part of the respondent's case in chief. It is so received with like effect as if he had here testified orally under oath from the witness stand to the same effect as that stated in the deposition.

What else do you wish to do? [274]

Mr. Staring: Next we have the deposition of Lieutenant Colonel Raymond L. Blust, beginning on page 56.

The Court: You may proceed.

Mr. Staring: We'll skip the preliminaries and start at the bottom of page 56.

(Whereupon, the reading of the deposition of Lt. Col. Raymond L. Blust was commenced, with Mr. Staring reading the questions and Mr. Cushman reading the answers, as follows:)

“LT. COL. RAYMOND L. BLUST

“called for examination by counsel for the respondent, being first duly sworn, was examined and testified as follows:

“Direct Examination

“By Mr. Ferguson:

“Q. Will you please state your full name, your rank and your station?

“A. Lieutenant Colonel Raymond L. Blust, Serial Number 030671, Stationed District Transportation Officer, Pennsylvania Military District, Uniontown Gap, Pennsylvania.

“Q. What is your home address, Colonel?

“A. It would be the same. [275]

“Q. The same as your station?

“A. That is right.

“Q. How long have you been in the Service, Colonel?

“A. I have been on active duty 13 years. Prior to that I had some reserve.

“Q. What has been your experience with ordnance and ammunition?

“A. My experience with ordnance and ammunition is what I have come in contact with by being in the Transportation Corps, working with ordnance, on loading and unloading of ships and rail equipment.

“Q. How long have you been in the Transportation Corps?

“A. Since its activation in 1942 or 1943. How-

(Deposition of Lt. Col. Raymond L. Blust.)

ever, all of my active duty has been in transportation. It was in Quartermaster, and when TC took over I went there.

“Q. Did you serve during World War II?

“A. Yes, sir.

“Q. In the Transportation Corps?

“A. Yes, sir.

“Q. Where?

“A. Well, principally New Orleans Port, New Orleans, Louisiana; Mobile Port, Mobile, Alabama. Then I joined the 16th Major Port which moved as a unit. We worked at Cardiff, South Wales, the beach operation near Morleux, France. [276] Then my biggest stretch overseas in World War II was at LeHavre, France, 22 months.

“Q. In 1950, Colonel, in the months of, we will say, the fall of 1950 and through December, 1950, and January, 1951, where were you stationed?

“A. In Japan.

“Q. What ports in Japan?

“A. I was at the Headquarters. Kobe, Port Command, which was the over-all command for about six or seven smaller ports.

“Q. Was the Port of Kure a part of that command?      A. Yes, sir.

“Q. And what did you have to do, if anything, with the Port of Kure?

“A. Specifically, you mean?

“Q. Yes.

“A. It was under our command. I was Port



(Deposition of Lt. Col. Raymond L. Blust.)

Commander, then Deputy Port Commander, then Port Commander off and on during that period.

“Q. Well, specifically let’s take December, 1950, and January, 1951.

“A. Yes, sir, on or about Thanksgiving of that year I was ordered to go to Kure and contact some ordnance people that were there looking over storage space and to set up an operation where we could deliver some ships to the storage [277] space they had selected. The two principal storage areas they had selected was the Island of Ita Jima and a place called Hiro. One was served by rail and the other served by water.

“Q. What were the traffic conditions in Kure with respect to the discharge of vessels and delay of discharge, if any?

“A. Well, as you probably recall, it was about the time there was considerable retreating backwards in Korea out of that Yalu River area, and there were a number of ships in the Japanese waters there that had originally been designated to go to Korea, I believe, for discharge. That was the step when they closed some of these ports, and we had to move back past the 38th Parallel. Also, there was considerable congestion at the depots that had been previously established, both rail and at the ports that had been used. So, we opened up an operation at Kure. I would say we opened up an operation at Kure the first week in December and we were sent various ships that had been selected for discharge through JLC, which is the Japanese Lo-

(Deposition of Lt. Col. Raymond L. Blust.)

gistical Command. We got our orders through them and the TC people I dealt with, who in turn got it from Ordnance. They had their requisitions and knew what they wanted for the forward areas. So, we never knew what ship they wanted us to unload first until they instructed us. [278]

“Q. Did you have any priorities there with respect to discharging certain types of cargo?

“A. Yes, sir. That changed practically daily.

“Q. I show you Libelant's Exhibit No. 20 and refer you to the list of cargoes in the latter part of it which is marked 'Air Force Cargo.' Will you look at that and tell me whether at that time it was of high or low priority?

“A. This would be very high at that time.

“Q. What type?

“A. Rockets. I believe that is Air Force. That is right, at that time. The ground force ammunition was not in demand, but the Air Force ammunition was, because every one was moving back and they were trying to protect them from the air.

“Q. Why would they need that ammunition?

“A. For immediate use.

“Q. By air?           A. Right.

“Q. And looking at the early part of the listed ammunition in the first part of Libelant's Exhibit No. 20, how about that cargo?

“A. These grenades?

“Q. Yes, and the Howitzers.

“A. These are 155's. There were many, many ships having nothing but 155's, and there was a lot

(Deposition of Lt. Col. Raymond L. Blust.)

in storage. [279] What I have seen here, these would have much higher priority under existing circumstances we had at that time.

“Q. That portion of the cargo that was Air Force? A. That is right.

“Q. And the other cargo had low priority?

“A. That is right.

“Q. Was there any custom of unloading the high priority cargo out of a ship and leaving the remainder for subsequent discharge?

“A. Yes, sir, there are instances I recall. I can't tell you the names of the ships, but they would go to Pusan and finish it at a later date, and Kobe and Sasebo.

“Q. So that a cargo such as that would, you say, or would not be indicated to discharge, say, 2800 tons, if that was the Air Force cargo with rockets, and leave the balance of the cargo in the ship for discharge in accordance with arrival dates with other ships?

“A. No doubt there were other ships that had another 2800 tons of rockets, so we would knock that ship off and go to other ships and take out the priority cargo.

“Mr. Knudsen: You received the orders from where?

“The Witness: Japan Logistical Command.

“Q. (By Mr. Ferguson): And for discharge where? [280]

“A. At Yokohama. We had liaison men, and they knew what they wanted in the fighting areas.

(Deposition of Lt. Col. Raymond L. Blust.)

“Q. From your experience there could you say whether vessels were delayed with low priority ammunition cargoes such as 30, 60 or 75 days during that period?

“A. As I recall, there was a number of ships—I won’t say where they were, either Yokohama or Kobe or maybe Moji—that did lay for lengths that long. I can’t tell you the names of the ships, but I know it wasn’t uncommon during that period for them to lay there for 60 or 70 days. It wasn’t for the reason they didn’t want to unload them, they may have wanted to divert them to another port, but the ports that were open couldn’t unload the traffic. The rails were jammed very much and also the receiving points at depots.

“Q. Were they also delayed at Kure first?

“A. Certain ships could have been delayed due to priorities, not because we didn’t want to unload a ship, but because we worked 24 hours around the clock.

“Q. Each ship had its priority?

“A. That is right. It wasn’t really the ship, it was the cargo which had priority.

“Q. Do you remember any of the ships in Kure during December, 1950, and January, 1951, such as the Hibbing Victory, the Marquette Victory? [281]

“A. Yes. I remember those ships by name, but I couldn’t tell you just exactly what months they were in what port.

“Q. That is calling for too much?

(Deposition of Lt. Col. Raymond L. Blust.)

“A. I may think of some more if I think real hard.

“Q. Do you remember the Lake Sicamous?

“A. I remember the name, yes, sir. I don’t remember the ship specifically, but the name is familiar.

“Q. You don’t remember having any contact with either the ship or its master?

“A. No. It is possible I was on the ship. I just don’t remember.

“Mr. Ferguson: That is all.”

(Whereupon, on cross-examination, the questions are read by Mr. Knudsen and the answers by Mr. Cushman, as follows:)

“Cross-Examination

“By Mr. Knudsen:

“Q. Colonel, you said that you were from time to time during the period we were talking about, both Deputy Commander and Commander, and I take it that was at Kobe?

“A. We had a full Colonel. He was sent to Korea. That was about the 1st of November, on or about. I was [282] the senior Lieutenant Colonel. So, according to Army Regulations, I would assume command. Then some time, I would say late January or early February, another full Colonel was sent in, and I went back to Deputy. But during December and January I think I was in command most of the time.



(Deposition of Lt. Col. Raymond L. Blust.)

“Q. That is in Kobe? A. Yes.

“Q. And being in command in Kobe, you were also in command of Kure?

“A. That is right. We had a subport commander who reported to our operations.

“Q. Who was that?

“A. Robertson or Robinson.

“Q. Captain Robinson? A. Yes.

“Q. And he was located in Kure?

“A. In Kure.

“Q. You said priorities changed daily. I take it you meant depending upon the demands?

“A. That's the only assumption you could make, demands from the field forces through headquarters.

“Q. Artillery shells might be high and next week rockets could be high, or even the next day rockets might be high?

“A. We didn't know what it would be on that low level. [283] If they told us to unload rockets, we would unload rockets.

“Q. And that was a shifting system, there was nothing flexible about it?

“A. If we had rockets to unload and we were unloading 105's on another ship, we would kick them out. We have unloaded overstowed cargo and put it back on a ship.

“Q. But you do remember quite clearly that during the period December, 1950, there were lots of 105 and 155 artillery ammunition around?

“A. Well, that is my recollection, yes, sir. We were always heavy on that. That seemed to be the

(Deposition of Lt. Col. Raymond L. Blust.)

biggest thing coming over. This is an assumption, that probably prior to reversal they had possibly high priority and were going right into Korean ports, and when they started backing up they started putting it in Japan, at least to keep it safe.

“Q. Do you recall that during December, 1950, and January, 1951, there was a number of M.S.T.S. ships in Kobe——”

Mr. Knudsen: Now, if the Court please, the reporter has misstated that. I remember specifically asking about Kure Harbor, not Kobe Harbor, and counsel has indicated just now that he has no objection to making that correction.

The Court: Then it should be made here, also, [284] on the original, on page 65.

Mr. Knudsen: I will reread it as corrected:

“Q. Do you recall that during December, 1950, and January, 1951, there was a number of M.S.T.S. ships in Kure Harbor?”

“A. As I remember, they were all M.S.T.S., and I don’t recall any commercials in there. I might be wrong, but I don’t recall it.

“Q. Do you recall whether or not the rehabilitation of Japanese ammunition depots located in and around Kure was still taking place in December, 1950?”

“A. As I recall, there was very little rehabilitation. They had been used by the Japanese Navy. It was headquarters of the Japanese Navy on this Island of Eta Jima, and I think it was merely a question of ordnance selecting the caves they

(Deposition of Lt. Col. Raymond L. Blust.)

wanted and we being able to deliver it. Some were inaccessible to the equipment we had.

“Q. Are you the officer who made the survey around Thanksgiving for the Artillery for the depots?

“A. I did not make it for the depots. I made it for the discharge and putting ashore. In other words, my job stopped when it went ashore and was put up in front of the caves.

“Q. You weren't concerned with whether there was a place to put it? [285]

“A. I wouldn't have put it unless there had been a place to put it. I say, we used roller conveyors at Eta Jima. It was strictly a water operation to shore, but at Hiro, I don't know which place this applies to, but that was a rail movement through town.

“Q. Do you recall when Eta Jima was opened up for shell storage?

“A. I don't remember just what types of ammunition went which place. Some went to Hiro, and some went to Eta Jima. They stored in those caves.

“Q. Were they set in both Hiro and Eta Jima in December, 1950?

“A. I would say not later than around the 10th, as I recall, we were unloading a lot of ammunition. It might have been the first of December, I don't know. The only date I have correct in my mind is the date before Thanksgiving, because it was just about like this (indicating the weather outside) when I was tromping around.

(Deposition of Lt. Col. Raymond L. Blust.)

“Q. How many times were you in Kure in December, 1950, and January, 1951?

“A. I couldn't say for sure, but I was there probably 90 per cent of the time. I did make trips to Yokohama and back up to Kobe.

“Q. You recall whether or not Kure was just the M.S.T.S. ships? [286]

“A. Yes, there was always ships standing by. We could only work certain types of ships for two reasons: One was the safety factor and the other facilities. Facilities weren't good. It wasn't like working in Brooklyn, sir. Any place we could put a barge in we put it in.

“Q. Do you know why the S.S. Lake Sicamous lay at anchorage 30 days in the harbor?

“Mr. Ferguson: He said before he didn't remember the Lake Sicamous.

“The Witness: I remember the name. If you tell me it was in Kobe, I said probably that's where I remembered it, but I believe from the line of conversation we assumed it was Kure.

“Q. (By Mr. Knudsen): But you didn't recall specifically?

“A. Specifically I couldn't say. I have heard of the ship somewhere.

“Q. Was there any air raid at Kure while you were in Kure? A. Not to my knowledge.

“Q. Were there any hostile forces on the shore?

“A. No, sir.

“Q. Any air raid alerts you recall?

“A. That was a British zone, and I am not

(Deposition of Lt. Col. Raymond L. Blust.)

positive they had control of Hiroshima Prefecture. We were their [287] guests in Kure.

“Q. I take it, then, Colonel, if a ship came in with a load of artillery and ammunition and at the same time a ship came in with some rockets, for the convenience of the Government the rockets were unloaded first?

“A. I wouldn’t necessarily say that first. If that was our orders. If we got orders to unload rockets, we would unload rockets. If we got orders to unload artillery, we would unload artillery. There were other types of cargo just about as high priority as rockets. I don’t recall, but I think there were proximity fuses, perhaps.

“Q. Do you know whether during December, 1950, and January, 1951, vessels arriving at Kure were discharged in the same order as they arrived in the port?

“A. I would say no. Some ships might have been in Korea, some in Yokohama. They could have been partially discharged.”

Mr. Knudsen: That is all.

Mr. Staring: May that deposition be received as part of the respondent’s case in chief?

The Court: It is received in evidence as part of the respondent’s case in chief with like effect as if that witness was here sworn and testified orally from the witness stand to the same effect as stated in the deposition. [288]

What else do you have?



Mr. Staring: If Your Honor please, respondent rests.

The Court: Any rebuttal?

Mr. Knudsen: If the Court please, libelant rests.

The Court: It will be more convenient to the Court to hear further proceedings in this case, namely, the argument of counsel, on Monday, the 22nd, at 2:00 o'clock in the afternoon.

Mr. Knudsen: If the Court please, may all the witnesses be excused?

The Court: All of the witnesses are now excused, and the Court wishes to thank them for their patience in attending the Court upon this hot day.

Is there any reason why counsel cannot be present at the time mentioned—2:00 o'clock on the 22nd?

Mr. Staring: No, Your Honor. That would be very convenient.

The Court: If you have any further briefs to file, you may file supplemental briefs. Be sure that they are all on file prior to the close of business on the Friday preceding that day.

Mr. Knudsen: Might I ask the Court what day [289] of the week August 22nd is?

The Court: It is on Monday, August 22nd, at 2:00 o'clock in the afternoon.

Those connected with this case are excused until that time.

(At 4:45 o'clock p.m., Thursday, August 4, 1955, proceedings recessed until 2:00 o'clock p.m., Monday, August 22, 1955.)

August 22, 1955—2:00 P.M.

The Court: Are counsel ready to proceed with the further trial proceedings in the case of Western Canada Steamship Co., Ltd., vs. U. S., No. 15848?

Mr. Knudsen: Libelant is ready, Your Honor.

Mr. Staring: Ready for respondent, Your Honor.

The Court: I understand the matter comes on now, after disposing of all of the evidence, for the purpose of hearing counsel's argument on the merits.

Mr. Knudsen: Yes, your Honor.

Mr. Staring: Yes, your Honor.

The Court: Do counsel still remain content [290] with the closing of all the evidence?

Mr. Staring: Yes, your Honor.

The Court: And the resting of the case of each?

Mr. Knudsen: Yes, your Honor.

The Court: Very well. I will hear the arguments.

(Whereupon closing arguments were made by Mr. Knudsen on behalf of libelant and by Mr. Staring on behalf of respondent.) [291]

\* \* \*

Is there any suggestion which counsel may desire to make as to a time when counsel can meet with the Court to settle and enter findings of fact and conclusions of law and decree?

Mr. Staring: If your Honor please, I should like very much if that could be done when Mr. Cushman has returned. I don't know exactly how long

that will be, but I wonder if he could arrange with opposing counsel.

The Court: I have to fix it now. [293]

Mr. Staring: May it be in ten days then, your Honor, or would your Honor like to have it sooner?

The Court: No. I have no requirement as to time. I wanted counsel to discuss **the matter together** and see if they could suggest a time they believe would be convenient to them.

(Whereupon a short conference was had between counsel.)

Mr. Staring: Ten days appears to be agreeable to counsel.

The Court: Well, it is possible the Court might attend to it on Monday, September 12, at two o'clock in the afternoon, and that is the date set for it now.

(At 3:00 p.m., Monday, August 22, 1955, trial proceedings concluded.) [294]

### Certificate

I, Frances I. Gilligan, do hereby certify that I am the official court reporter for the above-entitled court, and as such, was in attendance upon the hearing of the foregoing matter.

I further certify that the above transcript is a true and correct record of the matters as therein set forth.

/s/ FRANCES I. GILLIGAN,  
Official Court Reporter.

[Endorsed]: Filed February 23, 1956. [295]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT  
COURT TO APOSTLES ON APPEAL

United States of America,  
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington do hereby certify that pursuant to the provisions of Subdivision 1 of Rule 10 of the United States Court of Appeals for the Ninth Circuit, and designation of counsel, I am transmitting herewith as the apostles on appeal herein to the United States Court of Appeals for the Ninth Circuit at San Francisco the following original papers in the file dealing with the action, to wit:

1. Libel in personam, filed Feb. 9, 1953.
8. Answer of respondent, filed Apr. 30, 1953.
16. Request for admission of Facts and Genuineness of Documents, filed Feb. 15, 1955, with attached exhibits:
  1. Transcript of Register, "Lake Sica-mous."
  2. Amendment to Contract.
17. Supplemental Request for Admission of Facts and Genuineness of Documents, filed Feb. 26, 1955.
18. Deposition of Robert Craig, filed Mar. 1, 1955.
19. Depositions of Colonel Harold R. Sanderson, Major Joseph Scales, Lt. Col. Raymond Blust, filed Mar. 4, 1955.

20. Respondent's Answer to Libelant's Request for Admission of Facts and Genuineness of Documents, filed Mar. 7, 1955.

21. Respondent's Answer to Libelant's Supplemental Request for Admission of Facts and Genuineness of Documents, filed Mar. 7, 1955.

22. Request for Admission of Facts and Genuineness of Documents, filed Mar. 10, 1955.

23. Libelant's Answer to Respondent's Request for Admission of Facts and Genuineness of Documents, filed Mar. 18, 1955.

24. Supplemental Request for Admission of Facts and Genuineness of Documents, filed Apr. 13, 1955.

25. Libelant's Answer to Respondent's Supplemental Request for Admission of Facts and Genuineness of Documents, filed Apr. 21, 1955.

26. Interrogatories to Respondent, filed Jun. 23, 1955.

34. Answers to Interrogatories Propounded by Libelant to Respondent, filed Aug. 3, 1955.

36. Amended Answer, filed Aug. 3, 1955.

40. Court Reporter's Transcript of Court's oral decision, filed 9-2-55.

41. Findings of Fact and Conclusions of Law, filed 9-19-55.

42. Final Decree, filed Sept. 19, 1955.

43. Notice of Appeal by Libelant, filed Dec. 15, 1955.

44. Libelant's Assignment of Errors, filed Dec. 15, 1955.



45. Cost Bond on Appeal, filed Dec. 15, 1955.
46. Citation on Appeal, filed Dec. 15, 1955.
47. Libelant's Statement of Points on Appeal, filed Dec. 23, 1955.
48. Libelant's Designation of Transcript on Appeal, filed 12-23-55.
49. Stipulation and Order Extending time for filing record, filed 12-23-55.
50. Stipulation and Order for Transmittal of original exhibits to Court of Appeals, filed Dec. 23, 1955.

Libelant's Exhibits numbered 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 19 and 20.

I further certify that the Court Reporter's Transcript of testimony and proceedings will be sent up under supplemental certificate when filed in my office.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office by or on behalf of the appellant for preparation of the apostles on appeal in this cause, to wit: Filing Notice of Appeal, \$5.00; and that said amount has been paid to me by proctors for the appellant.

Witness My Hand and official seal at Seattle this 18th day of February, 1956.

[Seal]

MILLARD P. THOMAS,  
Clerk;

By /s/ TRUMAN EGGER,  
Chief Deputy.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT  
COURT TO SUPPLEMENTAL APOSTLES  
ON APPEAL

United States of America,  
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that I am transmitting herewith, supplemental to and as a part of the apostles on appeal herein, the following original document:

51. Court Reporter's Transcript of Proceedings at Trial, filed Feb. 23, 1956.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle this 24th day of February, 1956.

[Seal]

MILLARD P. THOMAS,  
Clerk;

By /s/ TRUMAN EGGER,  
Chief Deputy.

[Endorsed]: No. 15004. United States Court of Appeals for the Ninth Circuit. Western Canada Steamship Co., Ltd., Appellant vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed January 25, 1956.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT  
COURT TO SUPPLEMENTAL APOSTLES  
ON APPEAL

United States of America,  
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that I am transmitting herewith, supplemental to and as a part of the apostles on appeal herein, the following original document:

51. Court Reporter's Transcript of Proceedings at Trial, filed Feb. 23, 1956.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle this 24th day of February, 1956.

[Seal]

MILLARD P. THOMAS,  
Clerk;

By /s/ TRUMAN EGGER,  
Chief Deputy.

[Endorsed]: No. 15004. United States Court of Appeals for the Ninth Circuit. Western Canada Steamship Co., Ltd., Appellant vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed January 25, 1956.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.



United States Court of Appeals  
for the Ninth Circuit

No. 15004

WESTERN CANADA STEAMSHIP COMPANY  
LTD., a Corporation,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLANT'S STATEMENT  
OF POINTS ON APPEAL

Comes Now Western Canada Steamship Company, Ltd., appellant herein, by and through Bogle & Gates, its proctors, pursuant to Rule 17 of the rules of this Court, and files its statement of the points upon which it intends to rely in this appeal as follows:

1. The Court below erred in finding that the redelivery of the S.S. Lake Sicamous, hereinafter called the "Vessel," to appellant was not delayed by any inexcusable act or omission connected with the loading of her cargo at Bangor, Washington. (Finding of Fact VI.)

2. The Court below erred in failing to find and conclude that the redelivery of the Vessel to appellant was delayed 11 days, 17 hours and 15 minutes by reason of the failure of appellee to load and stow the

Vessel within a reasonable time and with reasonable diligence at Bangor, Washington.

3. The Court below erred in finding that the Vessel was afforded discharging facilities and commenced to discharge as soon as discharging facilities were available after her arrival at Kure, Japan, in accordance with military priorities then in effect and the urgent needs of the armed forces engaged in hostilities in Korea. (Finding of Fact IX.)

4. The Court below erred in failing to find and conclude that the redelivery of the Vessel to appellant was delayed by 29 days, 22 hours and 20 minutes at Kure, Japan, by reason of congestion of the port created by appellee's having ordered too many ships into said port and/or by reason of appellee's failure to provide adequate storage facilities ashore at said port to receive the cargo aboard said ships and/or by reason of appellee's failure to provide adequate discharging facilities and discharge the Vessel with reasonable diligence at said port.

5. The Court below erred in finding that during the period when the vessel lay in the port at Kure priority in the use of the facilities for loading and discharging ships at said port was enjoyed by British and other ships supplying British Commonwealth forces. (Finding of Fact XII.)

6. The Court below erred in failing to find that during the entire period when the vessel lay in the Port of Kure the only ocean going ships that were in said port for the purpose of discharging cargo

were ships chartered to appellee through the Military Sea Transportation Service and (with one exception) owned by appellee through the Maritime Administration, and that each of said ships was chartered to appellee for a period of about 120 days from the time of delivery or to the termination of the voyage current at termination date, and that (with one exception) each of said ships was delivered to appellee later than was the Vessel, and that appellant had the privilege of extending the charter party applicable to each of said ships for a second period of about 120 days, and that appellee did not have the privilege of extending Charter Party "MST-197" applicable to the Vessel, hereinafter called MST-197, for a second period of about 120 days or at all.

7. The Court below erred in finding that the ports of Japan were congested everywhere as a result of efforts by the United States as a member of or in behalf of a concert of nations to get ammunition into Korea to meet a great national and international military emergency. (Finding of Fact XIII.)

8. The Court below erred in failing to find that during December, 1950, and January, 1951, the ports of Japan, and particularly the port of Kure, Japan, were congested as a result of appellee having ordered too many ships into said ports instead of other ports, and as the result of appellee having created an oversupply of certain types of ammunition in Japan, and as a result of appellee having failed to

provide adequate storage facilities in Japan for the cargoes aboard the ships ordered by appellee into said ports.

9. The Court below erred in finding that throughout the autumn of 1950 and early winter of 1951 and at all material times military operations in Korea had imposed heavy burdens on the facilities of all the military ports of Japan and had taxed the capacity of those ports, including in particular the ports of Moji and Kure, to handle military cargo and particularly to handle ammunition because of the special handling required by ammunition, the regulations applicable to it, the danger to vessels, ports, population and equipment and the precautions necessary in its movement and storage. (Finding of Fact XIV.)

10. The Court below erred in finding that any delay suffered by the Vessel in completing her second voyage under MST-197 and being redelivered to her owners was the result of the operation of military priorities, the urgent needs of United States forces engaged in military operations and the governmental operations of the United States or of the over-all command of The United Nations acting for the United States and other sovereignties which were in concert and carrying on those governmental operations, whatever they were properly called, whether they were the Korean War itself or whether they were war connected police activities of a state or of an organization of member states. (Finding of Fact XVI.)

11. The Court below erred in failing to find and conclude that the delay in the redelivery of the Vessel to appellant was proximately caused by the fault and neglect of appellee in failing to load and stow the Vessel at Bangor, Washington, with reasonable diligence, and in failing to provide cargo storage and discharging facilities for and discharge the Vessel with reasonable diligence at Kure, Japan, and particularly that said redelivery was wrongfully and unreasonably delayed for 11 days, 17 hours and 15 minutes as the proximate result of the failure of appellee to load and stow the Vessel with reasonable diligence at Bangor, Washington, and that said redelivery was wrongfully and unreasonably delayed for 29 days, 22 hours and 20 minutes as the proximate result of the failure of appellee to provide cargo storage and discharging facilities for and discharge the Vessel with reasonable diligence at Kure, Japan.

12. The Court below erred in finding that appellee exercised reasonable diligence in all the circumstances in its performance of MST-197. (Finding of Fact XVII.)

13. The Court below erred in finding that appellant failed to perform the terms and conditions of Article 29 of MST-197 by failing to make any demand for negotiations for a revision of the rate of charter hire under the terms and conditions of Article 29. (Finding of Fact XVIII.)

14. The Court below erred in failing to find and



conclude that Article 29 of MST-197 is not applicable to appellant's claim asserted herein.

15. The Court below erred in failing to find and conclude that in any event appellee waived and is estopped to assert any failure of appellant to comply with Article 29 of MST-197 in that at all times appellee refused to entertain or act upon appellant's claim for damages for breach of charter party asserted herein under Article 32 of MST-197 (The Disputes Clause).

16. The Court below erred in failing to find and conclude that in any event appellee waived and is estopped to assert any failure of appellant to comply with Article 29 of MST-197, and any such failure is excused, in that appellee failed to object to the sufficiency of the notice given or demand made thereunder by appellant at a time when appellant could have cured any such insufficiency of notice or demand, or at any other time until appellee served its Amended Answer herein.

17. The Court below erred in failing to find and conclude that in any event appellee waived and is estopped to assert any failure of appellant to comply with Article 29 of MST-197 by denying any liability to appellant under MST-197.

18. The Court below erred in failing to find and conclude that in any event not later than January 19, 1951, appellant properly demanded negotiations for a revision of the rate of charter hire under the terms and conditions of Article 29 of MST-197.

19. The Court below erred in failing to find the market rate of charter hire for the Vessel under terms and conditions similar to those of MST-197 during the period of unreasonable and wrongful delay, and in failing to find the difference between that market rate of charter hire and the charter rate of hire.

20. The Court below erred in concluding that the Vessel was redelivered to appellant by appellee within the period provided in MST-197. (Conclusion of Law II.)

21. The Court below erred in concluding that any and all delays suffered by the Vessel on her second voyage under MST-197 and all of the acts and things done and omitted which were complained of by appellant in this action, wherever occurring, were things which were excused by reason of the fact that they were compelled by the warlike and lawful police and governmental activities of appellee and of the United Nations and its member nations in their concerted support and contribution to the Korean War, and that none of the acts done which were complained of by appellant were done under any other circumstances, and that for all such acts and things done and omitted appellee is not liable in this action. (Conclusion of Law III.)

22. The Court below erred in concluding that appellee has fully performed all the matters and things to be performed by it under MST-197 and has com-

mitted no breach of MST-197. (Conclusion of Law IV.)

23. The Court below erred in concluding that appellant has failed to prove the material allegations of its libel and has failed to prove any cause of action against appellee. (Conclusion of Law V.)

24. The Court below erred in concluding that appellee is entitled to a decree dismissing the libel with costs. (Conclusion of Law VI.)

25. The Court below erred in failing to find and conclude that appellee knew or should have known that the second voyage of the Vessel under MST-197 would overlap the termination date, and that appellee was therefore obliged under MST-197 to load, stow, forward, provide cargo storage and discharging facilities for and discharge the Vessel with reasonable diligence on that second voyage, and that appellant breached its obligations to appellant under MST-197 by failing to load and stow the Vessel with reasonable diligence at Bangor, Washington, and by failing to provide cargo storage and discharging facilities for and discharge the Vessel with reasonable diligence at Kure, Japan.

26. The Court below erred in failing to find and conclude that appellant is entitled to recover damages from appellee in an amount equal to the difference between the charter rate of hire and the market rate of hire for the Vessel for the period by which redelivery of the Vessel was wrongfully delayed, to wit: 41 days, 15 hours and 35 minutes at

the rate of \$666.67 per diem making a total sum of \$27,766.41, or, alternatively, for the amount of such difference for so much of said period of delay in redelivery as the Court below should have found justly due to appellant but in no event less than 11 days, 17 hours and 15 minutes at the rate of \$845.83 per diem making a total sum of \$9,912.02.

27. The Court below erred in entering its final decree on September 19, 1955, dismissing appellant's libel herein and awarding appellee its costs against appellant in the sum of \$63.00 and decreeing that appellant recover no costs against appellee.

28. The Court below erred in failing to enter a final decree herein that appellant have and recover from appellee its damages computed as aforesaid, together with interest thereon at the rate of 6% per annum from February 9, 1953, until paid, together with its taxable costs and disbursements.

Dated March 5, 1956, at Seattle, Washington.

BOGLE, BOGLE & GATES,

/s/ C. CALVERT KNUDSEN,  
Proctors for Appellant.

Receipt of Copy acknowledged.

[Endorsed]: Filed March 28, 1956.